'UTHMĀN IBN FŪDĪ

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Edited and translated
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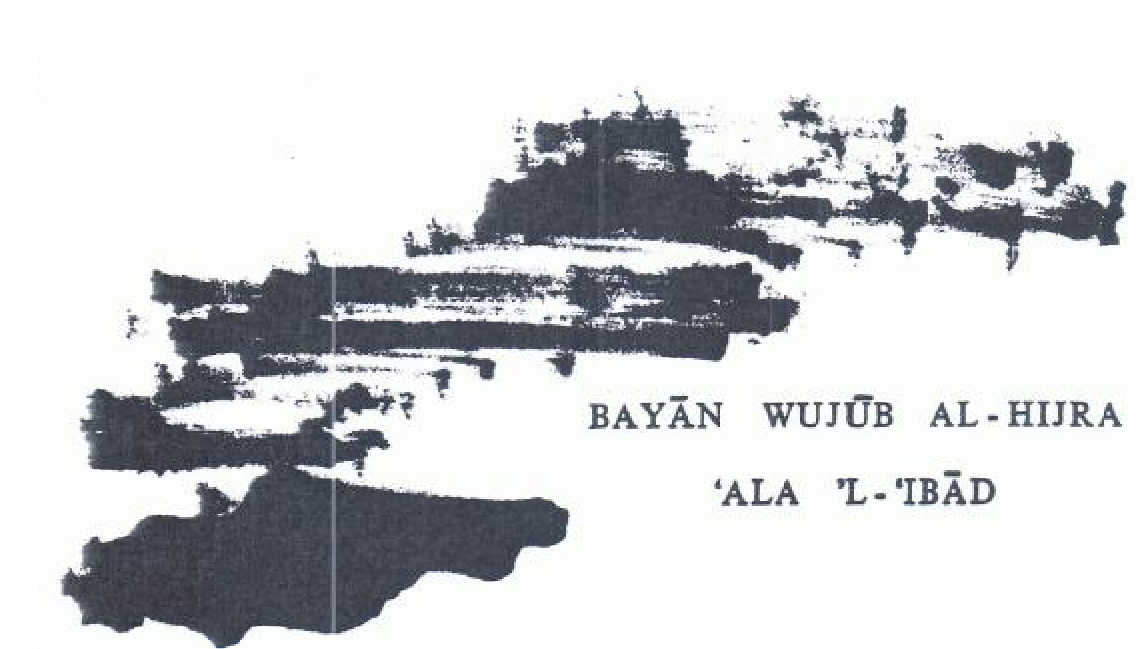
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FOREWORD

The International Academic Union has pleasure in putting before the public the first volume of its *Fontes Historiae Africanae*. This is a long-term project which has as its object the publication of source materials for the pre-colonial history of Africa, written in Arabic, in African languages and in European languages. The norm will be the publication of the source itself with an appropriate *apparatus criticus*, a translation of the source into either English or French, preceded by a historical and technical introduction. It is hoped thereby to make accessible to the international world of scholarship a corpus of source materials in many diverse languages which will form a solid basis for the study of African history.

A number of series is envisaged, according to the languages of the various bodies of material. We have chosen to begin with the *Series Arabica*, since the body of material in Arabic is the richest and the language the least widely known to the majority of African historians. The first volume of the *Series Arabica*, the *Bayān wujūb al-hijra* of 'Uthmān b. Fūdī may, at first sight, appear a curious choice, since it is more a work of legal theory than an actual history of the *jihād* movement of Dan Fodio. However, the centrality of the Islamic (and more specifically Mālikī) theory of *jihād* and government to the establishment and early history of the Sokoto Caliphate is such that the publication of the sources of Dan Fodio's thought seemed amply justified in such a collection of historical sources. The succeeding volumes in the *Series Arabica* will be:

II *Some documents from 18th Century Sinnār*, edited and translated by J. Spaulding and M.I. Abū Salīm.

III *Land in Dār Fūr*, a collection of documents edited and translated by R.S. O'Fahey and M.I. Abū Salīm.

IV *A Corpus of Arabic Sources relating to West Africa down to c. 1450*, translated by J.F.P. Hopkins and N. Levtzion.

V *The Replies of Al-Maghili to the Questions of Askia al-Hājj Muḥammad*, edited and translated by J.O. Hunwick.

It is expected that these volumes will be published over the years 1977–79. It is also hoped during this period to begin publication in the *Series Linguarum Africanarum*.

I was closely associated with the early stages of this work when Dr. El-Masri and I were colleagues at the University of Ibadan and it is a great pleasure to see the fruit of many years of his scholarly endeavour now taking shape in published form. I also have pleasure, on behalf of the International Academic Union, in thanking the International Council for Philosophy and Humanistic Studies (CIPSH) for its contribution towards the publishing costs, and the two university presses which have collaborated in the publication of this volume.

J. O. Hunwick,

Accra, 1976

Preface

The importance of editing Dan Fodio's *Bayān wujūb al-hijra ᶜala 'l-ᶜibād* lies chiefly in the light the book throws on the intellectual basis of the reformist movement which he led. There is also merit in the book as a contribution to Islamic literature in general. So far only very little of the literature of the Sokoto reformers has been translated into English. In this connection one may cite the translations of Dan Fodio's *Tanbīh al-ikhwān* and the *Rawḍat al-afkār*, ascribed to his son, Muḥammad Bello, by H. R. Palmer; the highly unsatisfactory and often unreliable part translation and part paraphrase of Muḥammad Bello's *Infāq al-maysūr* by E. J. Arnett may also be noted. Recently work of a more critical nature in this field has been done. M. Hiskett's editions of Dan Fodio's *Kitāb al-farq* and ᶜAbdullāh's *Idāᶜ al-nusūkh* and *Tazyīn al-waraqāt* are examples. In addition, there is Dr. I. A. B. Balogun's unpublished Ph.D. thesis consisting of a critical edition of the *Iḥyā' al-sunna*.

The present study presents a critical edition of Dan Fodio's *Bayān* in which he draws on some fifty-six works. Since the majority of these works could not be found in Nigeria I visited Egypt twice, in 1962 and 1964 and there managed to find all the relevant works except four which could not be traced. The variant readings of the four manuscripts and the works quoted by Dan Fodio are shown in the footnotes to the Arabic text.

In the English translation, besides some explanatory notes on the technical terms used by the author, there is some commentary of an essentially historical nature, on the text. The commentary attempts to relate certain aspects of the *Bayān* to the contemporary situation in Hausaland but generally speaking such observations do not go beyond 1806, the date when the *Bayān* was completed.

The Introduction examines in the first section, the personality of the *Shehu* Dan Fodio. This is aimed at showing the qualities which entitled him to assume the role of leadership. A brief description of the state of Islam on the eve of the *jihād* as presented by the *Shehu* and his lieutenants follows. Section three divides the history of the Shehu's Community into three periods and traces the development of his ideas as regards *bidᶜa, takfīr, hijra* and *jihād*. Certain matters emphasised in the *Bayān* are discussed next in the same section which ends with 'some comments on the reforming ideas of Dan Fodio.' Section four deals with the structure and style of the *Bayān*. The last sections concern themselves with the editing of the text and the system of translation.

F. H. EL-MASRI

Fez. 1976

Acknowledgements

First and foremost my thanks are due to Professor Abdullahi (H.F.C.) Smith and Professor J. O. Hunwick who introduced me to the field of the Sokoto *jihād* and directed the present work when it was first presented as a Ph.D. thesis at the University of Ibadan (1968). Professor Smith gave particularly valuable advice on the commentary and introduction and Professor Hunwick patiently and most rewardingly for me, worked over the English translation with me.

My thanks are also due to Dr. R.A. Adeleye who read some parts of my introduction and commentary and offered invaluable suggestions; Mr. K. Mahmud of the Ibadan University Library and Dr. D. M. Last who also gave valuable criticism in certain parts of the work; and Mr. Ibrahim Mukoshy who translated for me a number of items of early Sokoto literature written in Hausa and Fulfulde.

I am also indebted to all those who helped me in collecting manuscripts in Northern Nigeria and Ibadan: among them, Waziri Junayd of Sokoto; the Emir of Gwandu, al-Ḥājj Harūna; Nasiru Kabara of Kano; Aḥmad al-Ṣādiq and Aḥmad al-Rifāʿī both of Ibadan, to mention but a few.

In Egypt, between June and December 1964, I studied Mālikī Law at Al-Azhar under al-Shaykh Ṭāhā al-Sākit, who, in collaboration with other scholars from al-Azhar, had already edited Dan Fodio's *Iḥyā' al-sunna wa ikhmād al-bidʿa*. From him I received both the benefit of his great erudition and the support of his constant encouragement. To him and to the Al-Azhar University I owe many thanks. In Egypt too, the late Fu'ad al-Sayyid, archivist in charge of manuscripts in *Dār al-Kutub*, Cairo, encouraged me by his interest in my work and greatly assisted me in obtaining manuscript copies of works referred to by Dan Fodio.

Last but not least, my thanks are due to Mr. C. O. Akinboade who patiently typed the English part of the thesis, Mr. Hamzat ʿUthmān who typed the Arabic and Dr. P. D. Ayagere, who helped in checking both parts.

I must also thank the institutions which assisted me in preparing this work: the University of Ibadan which granted me study leave in the first term of the 1964–5 session to travel to and work in Egypt; its Department of Arabic and Islamic Studies which generously assisted me in various ways through all the stages of this work; and the University of Ibadan Library, whose hardworking staff were always most patient with my many demands on their services.

Finally, at the printing stage my sincere thanks go to the International Academic Union for sponsoring and financially supporting the publication of this work as well as to the CIPSH for its grant in aid.

Abbreviations

(for full references see Bibliography)

Works of 'Uthmān dan Fodio

Asānīd	*Asānīd al-ḍa'īf*, ms. Ib. 82/137
K. al-Farq	*Kitāb al-farq*, ed. and trans. M. Hiskett, *BSOAS.*, xxiii (1960), pp. 558–79
Kashf mā 'alayhi	*Kashf mā 'alayhi 'l-'amal wa mā lā*, ms. Ib. 82/100
Masā'il	*Masā'il muhimma*, ms. Ib. 82/258
Naṣā'iḥ	*Naṣā'iḥ al-ummat al-Muḥammadiyya*, ms. Ib. 82/94
Nūr al-albāb	*Nūr al-albāb*, ms. Ib. 82/58
Taḥdhīr	*Taḥdhīr al-ikhwān*, ms. Ib. 82/116
Tamyīz	*Tamyīz al-muslimīn min al-kāfirīn*, ms. Ib. 82/113
Tanbīh	*Tanbīh al-ikhwān 'alā aḥwāl arḍ al-Sūdān*, ms. 82/446

Works of 'Abdullāh b. Fūdī

Ḍiyā'	*Ḍiyā' al-sulṭān*, ms. Ib. 82/70
Idā'	*Idā' al-nusūkh*, ed. and trans. M. Hiskett, *BSOAS*, xix (1957), pp. 560–78
Tazyīn	*Tazyīn al-waraqāt*, ed. and trans. M. Hiskett, University of Ibadan Press, 1963

Works of Muḥammad Bello

Aqsām	*Miftāḥ al-sadād fī aqsām hādhihi 'l-bilād*, ms. Ib. 82/112
Infāq	*Infāq al-maysūr*, London, 1957
Miftāḥ	*Miftāḥ al-sadād fī dhikr al-awliyā' al-khawāṣṣ al-afrād*, ms. CAD/77
Turjumān	*al-Turjumān 'an kayfiyyat wa'ẓ al-shaykh 'Uthmān*, ms. CAD/71

Works by other Sokoto writers

Afkār	*Rawḍāt al-afkār* of 'Abd al-Qādir b. al-Muṣṭafā, ms. Ib. 82/18
Anīs	*Anīs al-mufīd* of 'Abd al-Qādir b. Gidādo, ms. Ib. 82/173
Ḍabṭ	*Ḍabṭ al-multaqaṭāt* of Wazir Junayd, ms. Ib. 82/31
Kashf	*al-Kashf wa 'l-bayān* of Gidādo b. Layma, ms. Ib. 82/178
Rawḍ	*Rawḍ al-jinān* of Gidādo b. Layma, ms. Ib. 82/26

General abbreviations

BSOAS	*Bulletin of the School of Oriental and African Studies*, University of London.
EI(1)	*Encyclopaedia of Islam*, 1st edn., Leiden, 1913–42, 4 vols. and Supplement.
EI (2)	*Encyclopaedia of Islam*, 2nd edn., Leiden, 1954—(in progress)
GAL & GAL S	Carl Brockelmann, *Geschichte der Arabischen Literatur*, 2 vols. & 3 vols. Supplement, Leiden, 1945–9 (2nd edn.) & 1937–42
IFAN	Institut Français (later Fondamental) d'Afrique Noire (Dakar).
JHSN	*Journal of the Historical Society of Nigeria*
ms. CAD	Manuscript in the microfilm collection of the Centre of Arabic Documentation, Institute of African Studies, University of Ibadan
ms. Ib.	Manuscript preserved in the University Library of the University of Ibadan.

Dating:

The Islamic *(hijra)* date is given first, followed by a stroke and the date in the Christian reckoning; e.g. 1 Ramaḍān 1218/15 December 1803. Where no 'equivalent' is given the date is according to the Christian reckoning.

Contents

Introduction

1. *The Author*[1]

ᶜUthmān b. Muḥammad Fūdī b. ᶜUthmān[2], generally known as Dan Fodio and popularly as the Shehu[3], was born at Maratta in the land of Galmi in north-western Nigeria on Sunday the last day of Ṣafar 1168/15 December, 1754.[4] He was descended from Mūsa Jokollo, who had migrated from Futa Toro to Konni with his Toronkawa following, in about the mid-15th century, perhaps because of religious persecution.[5] Seven generations of Dan Fodio's ancestors remained at Konni until his ancestor Muḥammad Saᶜd moved south-east to Maratta after Muḥammad Damka, the *amīr* of Konni, had raided them, killing about forty scholars and taking women and children as captives.[6] Again early in Dan Fodio's life his family migrated from Maratta to Degel which was destined to be the centre of his Community *(jamāᶜa)*[7]. No reason is given for this move, though the fact that Dan Fodio was not welcomed back to Maratta in his preaching campaigns suggests that the family left under unhappy circumstances.[8]

It is accepted that the family of Dan Fodio were Muslims at the time they arrived at Konni from Futa Toro.[9] Dan Fodio's ancestor, Muḥammad Saᶜd who moved from Konni to Maratta, was particularly noted as a scholar.[10] In all, the Banū ᶜĀl Fulani, to which Dan Fodio belonged was not only the largest section of the Toronkawa, but also enjoyed the highest reputation for learning and piety.[11] The most learned among them in the eighteenth century was Dan Fodio's father, Muḥammad Fodio (Fulfulde: *Fodiye*—the learned). A certain veneration and prestige were attached to Dan Fodio's family as the heirs and custodians of a rich heritage of learning and piety which predisposed society to accept the religious and intellectual leadership of a section of that family. The progressive transmission and growth of this learning and piety has been seen by Junayd, the present *wazīr* of Sokoto, as a mystic secret handed down in that family through the ages until it was manifested in Muḥammad Fodio.[12] This explanation, quite in accord with traditional Islamic thinking, illustrates the way in which Hausa society looked at such a family and helps to explain why Dan Fodio was found acceptable as a religious leader from an early age.

Another great asset often claimed by Islamic leaders is descent from the Prophet Muḥammad. Bello mentions that Ḥawwā', Dan Fodio's mother, was a daughter of Muḥammad b. Fāṭima bt.

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1 For the early life of Dan Fodio, his education and preaching, see F.H. El-Masri, 'The life of Shehu Usuman dan Fodio before the *jihād*', *JHSN*, ii (1963–4), pp. 435–48. For the life of Dan Fodio and a critical account of the *jihād*, see D.M. Last, *The Sokoto Caliphate*, pp. 3–60. A full-length account of the life and times of the Shehu has recently appeared, M. Hiskett, *The Sword of Truth*, O.U.P., New York, 1973.

2 A full account of Dan Fodio's ancestry and descendants appears in the endpapers to Last, *Sokoto Caliphate*.

3 To this day any child named 'Uthmān/Usumān in Hausaland is given the honorific 'Shehu'. See introduction of Abū Bakr Gumi to *Infāq*. (Cairo, 1964), p. 22.

4 *Kashf*, f.2r.

5 *Ḍabṭ*, f.7r.

6 ibid, f.84.

7 *Jamā'a* means a group (of people); party, troop, community; followers of any leader. In Sokoto literature we read of the *jamā'as* of Jibrīl b. 'Umar, of 'Abd al-Salām, 'Alī Jedo etc. Dan Fodio's *jamā'a*, however, gained special significance in the leadership of the Sokoto *jihād*. We shall use the term 'Community' to mean his *jamā'a* alone. See also below, p.26.

8 *Rawḍ*, f.6r.

9 *Tazyīn*, pp. 40–1.

10 *Īdā'*, p. 552.

11 *Ḍabṭ*, f.8v.

12 *Ḍabṭ*, loc. cit.

Muḥammad b. *Sharīf* ᶜAbd al-Ṣamad who derived his descent from the Prophet through Mulay Idris of Morocco.[13] This view is echoed in later writings which claim descent from the Prophet for Dan Fodio.[14] ʻAbdullāh b. Fūdī who investigated his genealogy in *Tazyīn al-waraqāt* and *Īdāᶜ al-nusūkh*[15] never alluded to the possibility of such a descent and Dan Fodio refuted it categorically when denying that he was the Mahdī.[16] Muḥammad Bello in his *Infāq*,[17] strongly denied descent from the Prophet and his reference in support of such a descent, alluded to above, is only hearsay introduced by the verb *yuqāl* (it is said), signifying uncertainty. Dan Fodio's denial of descent from the Prophet demonstrates his sincerity and humility in refusing to exploit favourable widespread legend about his being the Mahdī and thus of the Prophet's line. On the other hand, the fact that he was popularly considered a *sharīf* indicates his exalted status as a leader in society.

Dan Fodio, however, had a thorough grounding in the traditional Islamic sciences under the best scholars of the area.[18] He matured as a scholar early in life and before the age of twenty had started writing in his mother-tongue, Fulfulde. Soon after, he wrote his first work in Arabic, a poem in praise of the Prophet.[19] The prosody and diction of this poem reveal a talented young man of sound training in the Arabic language and the treatment of its theme reveals Dan Fodio as a deeply pious *ṣūfī*, already convinced that he had a mission.[20] His brother ʻAbdullāh says that he compiled this poem at the outset of his preaching activities (1188/1774–5).[21] His preaching was conducted at Degel and in the neighbouring areas of Gobir. He then made a tour of Kebbi to the west and from 1201 to 1206/1786/7–1791/2 toured Zamfara to the north-east of Degel on the upper Sokoto river.[22]

Even at this early age Dan Fodio moved about with a learned entourage, among whom was always his junior brother ᶜAbdullāh. The custom of a learned man, popularly thought to be saintly, conducting preaching tours with a large number of helpers and followers is reminiscent of *ṣūfī* practice and up to the beginning of this century such roving groups were not uncommon in the Arab world. They used to compete in different areas to win spheres of influence and often came to open hostilities with one another.[23] The accusation of Al-Muṣṭafā Gwoni of Daura that Dan Fodio preached to mixed crowds may have stemmed from such rivalry among scholars.[24]

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13 *Infāq*, pp. 181–2. Mūlay Idrīs, founder of the Idrīsid dynasty in Morocco (d. 793), was a descendant of ʻAlī b. Abī Ṭālib the fourth caliph who was both the Prophet's cousin and his son-in-law, having married Muḥammad's daughter Faṭima (see Julien, *History of North Africa*, pp. 38–9, *EI*(2), art. Idrīs I.)

14 e.g. ʻAbd al-Qādir b. Gidādo, *al-Iktifāʼ* (written 1265/1848–9); Muḥammad al-Bukhārī, *Salsalar Toronkawa* (Zaria, 1961); Aḥmadu Bello, *My Life* (Cambridge, 1962), p. 239. For discussion of this genealogy, see Last, *Sokoto Caliphate*, p.4, n.9 and Hiskett, *Sword of Truth*, p. 18, n.7.

15 *Tazyīn*, pp.40–1 et passim; *Īdāʻ*, p. 552.

16 See R.A. Adeleye et al., *'Sifofin Shehu*: an autobiography and character study of 'Uthmān b. Fūdī in verse', *Research Bull.* (CAD), ii, 1 (1966), pp.1–36.

17 *Infāq*, p. 156.

18 For his education see El-Masri, op. cit., pp. 436–9; Hiskett, *Sword of Truth*, pp. 30–41; Last, *Sokoto Caliphate*, pp. 5–9. The primary sources for his education are *Tazyīn*, *Īdāʻ* and the *asānīd* series of works—*Asānīd al-faqīr* and *Asānīd al-ḍaᶜīf* (hereafter simply *Asānīd*—see list of abbreviations). His *Salāsil* series also throw important light on his intellectual background—see his *Salāsil al-Qādiriyya* and *al-Salāsil al-dhahabiyya*.

19 *Al-qaṣīda 'l-dāliyya*, Zaria, n.d.

20 The theme of his poem is analysed below, p. 16.

21 *Tazyīn*, pp. 26–7.

22 ibid.

23 For an interesting literary account of such a group in Upper Egypt towards the end of the last century, see Ṭāhā Ḥusayn's largely autobiographical *al-Ayyām* (Cairo, 1929) i, pp. 66–96

24 *Tazyīn*, pp. 27–8.

Other learned men too, showed open hostility to Dan Fodio; Muḥammad Bello claims that some attended his classes merely to create confusion and break them up,[25] while others accused him of hypocrisy and self-seeking.[26] Such accusations doubtless arose less from any lack of sincerity on the part of Dan Fodio than the jealousy of certain other scholars competing for spheres of influence.

However, Dan Fodio's preaching campaigns were different in their nature and objectives from the activities of the other *ṣūfīs* who roamed about in search of a living and practised magic. His objective, at its initial stages, was to propagate Sunni Islam and to condemn alien practices, ranging from simple un-Islamic ethics such as entering other peoples' houses without permission, to polytheism *(shirk)*, such as making sacrifices to trees and stones.[27] At the same time, basing himself on the *ṣūfī* world-view, he taught the tenets of Islam, simply put, to the masses that flocked to him. Later his field of preaching widened as a result of the intellectual development of the Community and political development in Hausaland. In the realm of dogma he waged his major campaigns against such innovations as the tendency to anathematize Muslims either for having committed grave sins or for not knowing the scholastic arguments for proving Divine Unity. But these did not come at the beginning of his career.[28]

Both in his preaching and writing, Dan Fodio devoted his time to campaigning against deviations from Sunni belief and practice. He had his regular students with whom he discussed advanced theology and *ṣūfism* and, on their return to their homelands, they advocated his ideas and enhanced his prestige.

Our concern in the following pages is not to examine the political, economic or religious factors that favoured the success of the *jihād* in that particular period, nor yet to analyse Dan Fodio's scholarship or the originality of his thinking. The last two factors receive some consideration below,[29] but attention is mainly focused on those personal merits of Dan Fodio which fitted him for leadership of a successful *jihād* in Hausaland.

All traditions of reform in Islam draw their inspiration and leadership from one of two types of man. On the one hand, there is the man who claims to be in direct communion with God and the Prophet and supports his claims by the esoteric interpretation of the Qua'ān and the *Ḥadīth*. He sees what people do not see and commands absolute obedience from others, since he receives knowledge directly from above and salvation is to be expected only through satisfying him. This tradition is represented by the *Shī'a* doctrine of imamate and the theory of Mahdism which has grown out of it. The other type of man comes from the *fuqahā'* class, a theologian who does not claim any spiritual prerogative and who derives his knowledge from the exoteric understanding of the *Sharī'a*. He observes the shortcomings of his fellow-Muslims and mobilizes them to enforce his reform. Classical examples of this type of reform were undertaken by the Khārijites and the Wahhābis.

The fascination of Dan Fodio's personality is that it combined the fundamental characteristics of both types of men. He was a *ṣūfī* and a theologian much like al-Ghazālī (d.1111) who had worked to bring *ṣūfism* in harmony with theology. Dan Fodio's theological arguments for the obligation of *jihād* in Hausaland are expounded in his *magnum opus*, the *Bayān wujūb al-hijra*

25 *Turjumān*, f. 2r. In this work, Bello describes his father's method of preaching and gives examples from his sermons.
26 *Infāq*, pp. 34–5; *Tazyīn*, pp. 27–9.
27 See his *Naṣā'iḥ*, chapter 4.
28 Discussion of the anathematization of Muslims for committing grave sins and of 'deviationists' among Muslims became features of the Shehu's preaching after he had come up against Jibrīl b. 'Umar's rather extreme position on the first, and as he was faced with the similarly extremist stand of the *mutakallimūn* on the second (*v. infra*, pp. 18–20).
29 *v. infra*, pp. 19–33.

ᶜala 'l-ᶜibād wa bayān wujūb naṣb al-imām wa iqāmat al-jihād. Considered by itself, the *Bayān* would suggest a typical example of the second man. The author relies upon the Book,[30] the *Sunna* and *ijmāᶜ* in that order, to substantiate all his points of view. The precise exoteric interpretation as formulated by the early Sunni scholars, is given to all the passages and the author does not claim to have had any direct communication from God. In this work, as well as in many others dealing with the *hijra-jihād* theme or with the state of Islam in Hausaland, Dan Fodio is a strictly orthodox theologian and jurist. The other aspect of his personality is most clearly shown in his *Wird*.[31] In this work he relates how divine favour was bestowed upon him, whereupon he acquired gnosis *(maᶜrifa)* and attained a mystical state *(ḥāl)*. The significant feature of this process was that he was 'drawn' to the presence of the Prophet Muḥammad and the other prophets and saints, and was 'girded with the sword of truth to be drawn against the enemies of God'[32] This experience or vision might seem not uncommon in the life of any *ṣūfī*, but when considered in its historical context, it shows a clear bearing on the developing situation of the time between the Community of Dan Fodio and the Gobir authorities. At the time of this experience Dan Fodio was just over forty years of age.[33] A few years later he composed an *ᶜajamī* poem,[34] in praise of ᶜAbd al-Qādir al-Jaylānī (d.1166), the founder of the Qādirī brotherhood *(ṭarīqa)*, In this poem, Dan Fodio urges his followers to possess arms and prays God to establish Islamic rule in Hausaland.[35] This period also coincides with the installation of Nafata, Sarkin Gobir, who took more rigorous measures than his predecessors against the Community, and issued the famous edict[36] to curb their influence. In this situation, Dan Fodio as a jurist *(faqīh)* saw the conditions which made a *jihād* in Hausaland obligatory and mobilised his following to establish an ideal Islamic state or else attain martyrdom. As a *ṣūfī*, he felt he had a closer and more direct access to the Divine Will. This he achieved not because of the status a *sharīf* or *mahdī*[37] claims, but through the medium of his spiritual 'ancestor' 'Abd al-Qādir al-Jaylānī.

There have been other *ṣūfīs* who made attempts to reform along more or less similar lines, but none so far as we know, led a militant movement crowned with such success as that of Dan Fodio. Shaykh Aḥmad Sirhindī (1564–1624) for example was a great and original *ṣūfī* thinker who profoundly influenced Islam in India but did not attempt to reform by force.[38] The Grand Sanūsī of Cyrenaica (d.1859) established a 'congregational' state on the basis of a *ṣūfī* brotherhood named after him. But membership of this movement rapidly increased through the sheer force of the founder's personality and the peaceful activities of the *zāwiyas* rather than by *jihād*.[39] The movement that can best be compared to the Sokoto *jihād* is that of al-Ḥājj ᶜUmar b. Saᶜīd al-Fūtī (d. 1864), who was greatly influenced by the example of Sokoto, though his achievement was, for a variety of reasons, of lesser magnitude.[40]

30 i.e. the Qur'ān.

31 *Wird*, Zaria, 1962. See also *Taḥdhīr*, where he refers to the same experience.

32 *Wird*, p. 3. See Hiskett, *Sword of Truth*, pp. 61–2 for the Shehu's mystical experiences and p. 66 for a translation of this section of the *Wird*.

33 *Wird*, loc. cit.; he was 40 years, five months and some days.

34 *'ajamī* non-Arab(ic): here—Fulfulde

35 *Tazyīn*, pp. 51–4. The chronogram given for the date of this poem can be interpreted as either 1795 or 1797.

36 *v. infra*, p. 10

37 *v. supra*, p. 2 n. 16

38 See *EI*(2) art. Aḥmad Sirhindī.

39 See E.E. Evans-Pritchard, *The Sanusi of Cyrenaica* (Oxford, 1949); N.A. Ziadeh, *Sanūsiyya* (Leiden, 1958), p. 115. When faced with European invaders the *zāwiyas* became natural centres of militant resistance—a defensive *jihād*.

40 For the influence of Sokoto on al-Ḥājj 'Umar al-Fūtī, see H.F.C. Smith, 'A neglected theme of West African history', *JHSN*, ii (1961), pp 180–1. For a political history of his state, see B.O. Oloruntimehin, *The Segu Tukulor Empire*, London, 1972.

Nevertheless, it is significant to note that the numerous *ṣūfīs* all over the Muslim world preaching for Islam, have not produced many examples of *jihād* movements. The reason seems to be in part that a *ṣūfī* is primarily engaged in the spiritual side of the faith and does not draw the sword to change the belief of others. Dan Fodio is one of the few examples of a *ṣūfī* being also the leader of a *jihād*. Yet it was the *ṣūfī* aspect of his personality that greatly contributed to his popularity and the reverence in which he was held.

His learning and preaching activities were coupled with piety and self-denial *(zuhd)*.[41] He maintained austerity in spite of his privileged position. As the leader of the Qādiri brotherhood he commanded blind obedience to himself. Gidādo dan Laima[42] quoted him as having said that only by observing five stipulations can a man obtain blessing from a *mujaddid*:[43] '(1) To love him; (2) to glorify him; (3) to consider him always in the right; (4) to cast his own mind behind his back or 'put it in his pocket' and accept everything the *mujaddid* says and act accordingly, and (5) to rank every other contemporary scholar below the *mujaddid* and never listen to what they say if it does not agree with what the former says.'[44] Dan Fodio received the special green mantle *(khirqa)* of the Qādirī order from ᶜAbd al-Qādir himself in a vision[45] and received the 'chain' *(sanad)* of this *khirqa* from his master Jibrīl b. ᶜUmar whose son Abū 'l-Tawfīq ᶜUmar put it on him.[46] He had also received other 'chains' concerning the first article of faith, the opening chapter of the Qur'ān, and so forth; and he transmitted them to his disciples.[47] A similar tie between a *shaykh* and his disciple is the *silsila*[48] which binds them in a chain of scholars to the Prophet and God. Dan Fodio instructed his followers to join such chains by emphasising the importance of being connected with the Prophet and God through intercessors *(wasā'iṭ)*, to obtain blessing *(tabarruk)*.[49] When a novice who has joined the *silsila* is in difficulty, all the souls of the saints in the chain and the Prophet and God respond to him. No such response is available to a man outside the *silsila*.[50]

The Qādiriyya in his days had not yet been challenged by other orders, so Dan Fodio was the supreme *ṣūfī* leader of Hausaland. As a *ṭarīqa*, the Qādiriyya is known for its faithful adherence to the practices of orthodoxy[51] and Dan Fodio was an orthodox theologian. His mystic experiences were within the limits allowed by the recognised 'strict' orthodoxy of his order since he did not claim to have reached any of the stages which imply the *ṣūfī's* union with God. Yet fantastic claims were made for him. He was believed to have the power to fly or walk on water and to have become a *quṭb* (pivot) on which the universe rested.[52] Such fantastic tales abound in Sokoto literature[53] and news of more miraculous deeds must have circulated among Dan Fodio's con-

41 See for his *zuhd*, *Rawḍ*, f. 20.

42 ibid., f. 11.

43 Dan Fodio claimed to be a *mujaddid* ('regenerator' of the faith) and was widely believed to be the *mujaddid* of the thirteenth Islamic century.

44 The last stipulation is reminiscent of what ᶜAbd al-Qādir al-Jaylānī is reported to have said; see *Miftāḥ*, p. 60.

45 Dan Fodio, *Wird*, p. 3.

46 *Asānīd*, chapter VII; see also another but more elaborate work of his on the same subject, *Asānīd al-faqīr*, p.7.

47 Dan Fodio, *al-Salāsil al-Qādiriyya*, ms. Ib. 82/110 f.4.

48 A *silsila* (chain) records the mystical genealogies of students. A *sanad*, on the other hand, shows the authority through which knowledge was passed on from the earlier savants.

49 Dan Fodio, *al-Salāsil al-dhahabiyya*, ms. Ib. 82/114, pp.2–3.

50 *Asānīd*, chapter VIII.

51 A.J. Arberry, *Ṣūfism* (London, 1963), p. 85; Alfred Guillaume, *Islam*, (London, 1962), p. 152.

52 See *Taḥdhīr*. Dan Fodio categorically refuted all that, yet, he modestly enumerated other attributes of the Prophet and the Mahdi that had been bestowed on him, as a Divine favour. See R. Adeleye et al., 'Ṣifofin Shehu', pp. 7–9.

53 *Rawḍ*, for example, contains many.

temporaries. Hausaland in the eighteenth century was still a superstitious society and it is hardly surprising that Dan Fodio's spiritual powers were exaggerated out of all proportion. It was not difficult, therefore, for a personal cult, which was believed to produce tangible results, to find acceptance in such a society. Thus Dan Fodio's position, as Last has observed, was partly based on his people's belief in the supernatural.[54] His friends and enemies alike, were awed by his 'powers'. Even the sultans of Gobir who felt that he was a menace to their authority showed him respect and indeed sought his favour. Bawa, Yakuba, Nafata and Yunfa in turn, visited him at Degel in an attempt to tap that mystic source of power with which he was credited.[55]

Among the already Islamised, who in turn exercised varying degrees of influence in the society, another important historical factor greatly enhanced the position of Dan Fodio as an unprecedented religious leader. This was the tense psychological situation emanating from the widely held belief in the impending appearance of the Mahdī and the consequent end of the world. The theory of Mahdism claims that when there prevails a time of injustice, oppression and social disorder, coupled with the appearance of other 'stipulated signs of the Hour' *(ashrāṭ al-sā'a)*, a saviour in the person of the Mahdī will appear as a prelude to the end of the world.[56] Dan Fodio compiled ten works on Mahdism[57] and in those works compiled before the success of his *jihād* [i.e. 1808] he emphasised the prophecies that the Mahdī would appear in the early decades of the thirteenth century A.H. immediately before the End of Time.[58] He delegated Bello to meet his followers at Birnin Gada in c. 1805 to give them the good tidings that the coming of the Mahdī was imminent and that his *jihād* was only to herald the appearance of the latter.[59] After the success of the *jihād*, Dan Fodio denied the orthodoxy of the above prophecies which specify a date for the Mahdī's appearance and actually made apologies for his earlier views.[60] This change of mind on the part of Dan Fodio is strikingly significant. On the one hand it fits in with our classification of the history of the Community into three periods of which the period immediately before and during the early years of the *jihād* [i.e. the second period 1795–1808] saw Dan Fodio least tolerant and obliged him to exploit all possible avenues for the success of his *jihād*.[61] On the other hand, it conforms with the psychological climate in Hausaland which apparently influenced Dan Fodio to believe that the world was actually ending at that time. It is reasonable also to deduce that as the *jihād* became protracted, and the Shehu less certain of when it would end, he became more firm in his belief in the imminence of the end of the world.

In sum, the appearance of the Shehu Usuman Dan Fodio with his background of family prestige, education and command of reverence in Hausaland at the end of the eighteenth century was particularly well-timed to fit him for the role of religious and eventually political leadership.

2. *The historical setting of the Bayān*

(i) The state of Islam in Hausaland on the eve of the Sokoto jihād.

The question of who is a 'Muslim' and when does a man cease to be a 'Muslim', has been a

54 D.M. Last, 'A note on attitudes to the supernatural in the Sokoto jihād', *JHSN*, iv, 1 (1967), pp. 3–13.

55 See E.J. Arnett, *Gazeteer of Sokoto Province* (London, 1920), p.21.

56 See S. Biobaku and M.A. Al-Ḥājj, 'The Sudanese Mahdiyya and the Niger-Chad region', in *Islam in Tropical Africa*, ed. I.M. Lewis (Oxford, 1966), pp. 425–41. See also M.A. Al-Ḥājj, 'The 19th Century in Muslim eschatology: Mahdist expectations in the Sokoto Caliphate', *Research Bull.* (CAD), iii, 2 (1967), pp. 100–15.

57 M.A. Al-Ḥājj, op.cit., pp. 114–15 has compiled a list of ten works of Dan Fodio and eight by Bello on the subject of Mahdism. The 13th Islamic century began in 1785 A.D.

58 See *Tanbīh al-umma*, ms. Ib. 82/438 and *Muddat al-dunyā* copy in private collection seen by the author.

59 *Infāq*, p. 105.

60 See for example his *Tanbīh al-ikhwān* (written 1808) and *Naṣīḥat ahl al-zamān* (written 1811).

61 *Infra* pp. 15-16

thorny problem throughout the history of Islam. Of course at the extreme ends of the scale, there are people who are clearly Muslims and those who are definitely non-Muslims. These are distinguished either by their following the *Sharīʿa* in every detail or by their downright rejection of it. But when we move to the centre of the scale, the clear distinctions of the extreme ends gradually disappear and there arises a situation where it is difficult to say whether a man is a Muslim or not. To sub-divide this 'scale' into manageable sections, as regards Hausaland at the outset of the *jihād*, I propose to follow Dan Fodio's division of people into eight categories according to their relation to Islam as outlined in his *Tamyīz al-Muslimīn min al-kāfirīn*. The moderate tone of Dan Fodio in this work suggests that it was compiled after his *jihād* had proved successful and some time before 1812, since the title is mentioned in *Infāq* which was completed in the latter year. The events of the *jihād* and the religious enthusiasm that accrued might have confused the minds of the people as to who was a Muslim and who was not. It was essential to know this of a person in order to be able to decide whether or not to have dealings with him, such as permitting him to marry one's daughter, or when he dies, washing him ritually, praying over him and burying him in a Muslim grave-yard. Dan Fodio avoids theological polemics in this work to make the problem 'understandable to the laity' and it seems that the eight categories were those which Dan Fodio thought to exist in the area. The categories he enumerated are as follows:

(1) The *ʿulamāʾ* whose belief is sound; they perform *ghusl* [major ablution] after *janāba* [a state of major ritual impurity]; they perform ablution [with water] before prayers and do not unduly perform *tayammum* [ablution with sand] except in cases of necessity; they carry out the rest of the religious injunctions and do not show any sign of unbelief, such as venerating stones and trees and sacrificing animals at them or anointing them with *ʿajīn* [dough=libations?];[62] they do not deny anything in the *Sharīʿa*. These are definitely Muslims.
(2) The *ṭalaba* [they do exactly as the *ʿulamāʾ*, and Dan Fodio repeats the same words as above]; these are definitely Muslims.
(3) Those who listen approvingly to what the *ʿulamāʾ* say and do exactly as the *ʿulamāʾ* and the *ṭalaba* do [Dan Fodio again repeats the same words]; these too, are definitely Muslims.
(4) The category of unbelievers who have never accepted Islam[63] and their state is clearly unbelief.
(5) The category of those who mix acts of unbelief with acts of Islam. They have accepted Islam but failed to abandon such acts of unbelief as veneration of stones and trees by sacrificing animals at them and anointing them with 'dough'. These are also definitely unbelievers.[64]
(6) The sixth category, like the fifth, mix acts of unbelief with acts of Islam. They mock the religion of God and deny [some of] the injunctions of the *Sharīʿa*. These, too, are unbelievers.
(7) The category of innovators. These have accepted Islam and their belief is sound, but they intentionally perform *ṣalāt* without ablution. Nevertheless, no word of unbelief is heard from them, such as denial of the injunctions in the *Sharīʿa*, and no sign of veneration of stones or trees is observed from them. The scholars have advanced diverse rulings about this category [Dan Fodio quotes these rulings] but the accepted view is that they are disobedient Muslims (*ʿuṣāt*, sing. *ʿāṣī*).

62 *Ṣabb al-ʿajīn ʿalayhā*; this is often mentioned by Dan Fodio as a sign of polytheism, as in his *Naṣāʾiḥ* and it must have been practised in Hausaland. My inquiries have revealed no trace of this practice in contemporary Hausa society.

63 The corollary of this in Islamic law is that a born-unbeliever *(kāfir bi'l-aṣāla)* can be enslaved while unbelievers from category five and category six should not be reduced to slavery if seized as prioners of war.

64 For this category, which is a typical example of syncretism, see D.J. Stenning, *Savannah Nomads*, Oxford, 1959; J.H. Greenberg, *The influence of Islam on a Sudanese Religion*, New York, 1946; D.M. Last and M.A. Al-Ḥājj, 'Attempts at defining a Muslim in the 19th century Hausaland and Bornu', *JHSN.*, 3, ii (1965), pp. 231–40. The levying of uncanonical taxes, bribery, oppression and injustice mentioned in *Kitāb al-farq* and the Sokoto accusation of idols being worshipped in Bornu are germane to this category.

(8) The ignorant people who embraced Islam but have not understood it. They utter the Profession of Faith without believing in it because they do not care to know. These are unbelievers as far as their relations with God are concerned but as far as we are concerned they are Muslims, except when they show acts of unbelief. In the past, when religious knowledge was widespread among people, scholars branded such people as unbelievers; but now that such knowledge has become scarce, they should be treated by us as Muslims, though they are unbelievers before God [Dan Fodio here quotes scholars, the majority among whom regard such persons as unbelievers].[65]

The first three categories are good Muslims who adhere closely to the *Sharīᶜa*. The fourth is the category of outright unbelievers. As we move towards the centre of the scale the seventh are disobedient Muslims and the eighth ignorant Muslims. The fifth and sixth categories are the syncretists, the former through weaving Islamic practices into their traditional cults and the latter by mocking at Islam or by denying some of its basic tenets.

It would be of interest to identify which areas had a majority of Muslims, unbelievers or syncretists. Such a classification, however, cannot be made from available material. Nevertheless, it may be inferred from the warmth or otherwise of the reception Dan Fodio and his followers received on their preaching tours, as well as from the degree of success or failure of the jihād from one locality to another. The weakness of such an inference lies in the fact that the numbers involved either in accepting or rejecting the reforming preachers from one place to another are not known. They may well have been minorities. Similarly the success or failure of the *jihād* may have depended on contingencies other than majority support for the Muslim cause. For instance the military power of Gobir, far more than anything else, would account for the protracted resistance of Alkalawa, while Bornu in spite of its long tradition of Islam was only able to repel the jihādists' attacks because its rulers could muster enough might to do so.

A more appropriate classification would be on the basis of ethnic groups; this was actually followed by the Fulani themselves in their writings.[66] The main ethnic groups in Hausaland were the Hausa, the Tuareg and the Fulani. The pagans among the Hausa were known as Maguzāwa (singular: Bamagūje) probably from the Arabic *majūsī* (a magian, Zoroastrian).[67] According to Muḥammad Bello the Maguzāwa were a majority among the Hausa before the *jihād* and they were born unbelievers *(kuffār bi 'l-aṣāla)*.[68] The precise effect of Dan Fodio's preaching among them before the *jihād* is not easy to estimate. But ᶜAbdullāh b. Fūdī says that as a result of his brother's preaching in Hausaland, 'most of the ignorant people *(al-juhhāl)* renounced unbelief, disobedience and innovation'[69] Tradition says that over a thousand scholars assembled at Magami when Bawa, the Sultan of Gobir summoned them during the *ᶜīd al-kabīr* of 1788/9. Nevertheless, this number includes Muslims from all the ethnic groups in Hausaland, the majority of whom might well be non-Hausa. The Fulani scholars used an injunction of the *Sharīᶜa* to charge the Hausa masses with unbelief. The law enjoins the believers to befriend believers to the exclusion

65 The status of this eighth category created great controversy among the Muslims in Dan Fodio's time. The advocates of *'ilm al-kalām* (scholastic theology) from among the *ṭalaba* set out to anathematize all those who could not explain what the articles of faith or *tawḥīd* meant in the way the *mutakallimūn* had elaborated. Dan Fodio wrote warning such *ṭalaba*: see Ib. mss. 82/115, 118, 119, 94. This point will be reiterated when we discuss the development of Dan Fodio's ideas below.

66 *Aqsām*, pp.1–15.

67 See Joseph Greenberg, *Influence of Islam on Sudanese Religion*, p.13, n.7.

68 *Aqsām*, p. 10.

69 This statement is contained in Dan Fodio's first letter to the Shaykh of Bornu, Muḥammad al-Amīn al-Kānemī. The letter was actually drafted by 'Abdullāh and was made public along with other parts of the exchange by Muhammad Bello, *Infāq*, pp. 167–74. The letter also appears in *Tanbīh*, pp. 25–7, *Rawḍ*, f. 6v., *Anīs*, p.6.

of the infidels and to pay allegiance to the Commander of the Faithful. The Hausa resisted the *jihād* armies and failed to observe the above injunction and consequently they were anathematized by the Fulani.[70] Nonetheless there were large numbers of Hausa malams who could 'condone the pre-Islamic practices without compromising themselves.'[71] The constant attack of Dan Fodio and other *jihād* leaders on the evil scholars *(ʿulamā' al-sū')* might refer to such malams who condoned the pre-*jihād* state of Islam as well as the malams who lived by their wits.

The Tuareg, according to Bello, were of three sections. The largest of these were those who claimed to be Muslims but cared little for Islam. Chief among these were a group whom Bello called 'the Berbers' and Banū Ḥassān among the Tuareg.[72] Thus the majority among the Tuareg according to Bello were what we call syncretists, while Bello recognises a minority of good and pious Muslims and yet others as born-unbelievers among the Tuareg.[73] D.M. Last has shown the Tuareg scholars in the list of the companions of ʿAbdullāh b. Fūdī to be more numerous than the Hausa.[74] This fact might be a result of the comparative friendship between the Tuareg and Dan Fodio, rather than a general numerical advantage of Tuareg scholars over the Hausa scholars.[75]

The Fulani had a more deep-rooted tradition of Islam than the Hausa or the Tuareg and their scholars were more distinguished for their learning and preaching. Among the Fulani, the Toronkawa were mainly Muslims while the cattle Fulani and the Sullebawa were either nominal Muslims or pagans.[76] Both Muḥammad Bello and Dan Fodio quote the ruling of the sixteenth century Timbuktu scholar, Aḥmad Bābā, that the majority of the Fulani were Muslims except for a section of them beyond *(warā')* Jenne who were born unbelievers.[77] Bello adds that a section of the Fulani, too, to the west of Katsina and between Katsina and Kano were also born unbelievers. A minority of the Fulani, according to Bello, were like the majority of the Tuareg [category five] in that they mixed pagan practices with Islam.[78] Needless to say, the greatest number of Dan Fodio's followers came from the Fulani.

As for the Habe[79] kings and their entourage, they imposed uncanonical taxes on their subjects, they persisted in self-indulgence and to all appearances, they did not follow government as ordained by the *Sharīʿa*.[80] That would only place them in the seventh category and brand them as disobedient. But further charges of unbelief are brought against them. Bello considers them mainly apostates with only a few either born or converted Muslims.[81] ʿAbdullāh compares the

70 *Aqsām*, p. 14.

71 Last, *Sokoto Caliphate*, p.lxxvi.

72 *Aqsām*, p.13. The distinction between the terms 'Berber' and 'Tuareg' is not clear, nor yet can the B.Ḥassān be identified. It seems unlikely to refer to the Moorish Arab tribe/social group of that name which belongs to the area west of Timbuktu.

73 Ibid.

74 Last, *Sokoto Caliphate*, lxxvii and n. 56 to that page.

75 Last, *Sokoto Caliphate*, lxxviii.

76 See Last, *Sokoto Caliphate*, p.lxxvi for these divisions of the Fulani.

77 *Aqsām*, p.15, *Masā'il*, ch. 10, quoting Aḥmad Bābā, *al-Kashf wa 'l-bayān li aṣnāf majlūb al-Sūdān*.

78 *Aqsām*, p.15.

79 The material bearing on criticism of the 'Gobir', 'Habe' or 'Sudanese' as variously used in the Sokoto Arabic literature concerning the bases of government and administration, refers to all indigenous states and peoples. Indeed the use of 'Habe' must be taken in its original meaning i.e. 'autochthonous peoples'. The writings of the Sokoto *jihād* leaders however, were based principally on their Gobir experience. The other scattered *jamā'as* held similar views with their leaders in Gobir and this is proved by the way they identified their cause with the cause of the Degel reformers.

80 See *K. al-Farq*, *passim*.

81 *Aqsām*, p.11; *Infāq*, pp. 32, 133 *et passim*.

majority of them to Sunni ᶜAli and his entourage.[82] Their major break with Islam however, was their stopping people from becoming Muslims. Nafata, Sarkin Gobir, had issued a famous decree before the *jihād* forbidding any more conversion to Islam and ordering that everybody should return to the religion of his father.[83] But this order obviously did not avail against the growing popularity of the Community. By the time Yunfa was installed as Sarkin Gobir [c. 1216–17/ 1802–3], the Community at Degel had grown very large and more followers were joining it. The new Sarki, as predicted by Dan Fodio and his associates, was more rigorous than his predecessors. He attempted once to kill the Shehu[84] and tried to put a stop to the growth of the Community. He began to persecute the Muslims migrating to Degel and to confiscate their property. The raid he made with the assistance of Sarkin Kebbi on the followers of ᶜAbd al-Salām,[85] and his consequent threat to raid Degel itself was the final spark for the Shehu's *hijra*.

Stopping people from becoming Muslims (i.e. stopping them from joining the Shehu), was considered by the Fulani scholars to be a definite break with Islam. The language used in the Sokoto Arabic literature to describe the behaviour of the Habe sultans and their entourage is reminiscent of passages in the Qur'ān and *Ḥadith* concerning the opposition of the Quraysh idolators to the Prophet Muḥammad. The Habe dispensation parallels the *jāhiliyya* period of pre-Islamic Arabia and the Sokoto *hijra-jihād* events recall the early struggle of the Prophet against the people of Mecca. In the final analysis the personality of the Shehu has much in common with that of the Prophet.[86]

The above account describes in brief the state of Islam in the Habe kingdoms at the outset of the *jihād*, as expressed by Dan Fodio, 'Abdullah and Bello. Together, the triumvirate led their arguments against the Habe states to the inescapable conclusion that *hijra* from their jurisdiction and subsequent *jihād* against them had become obligatory upon the Muslims.

There were, however, certain other 'deviant' Muslim groups, immediately before and after the *jihād*, for which Dan Fodio showed great concern in his writings. The *jihād* also posed new problems of defining a Muslim, and expanded the frontiers of Dan Fodio's sphere of influence to Bornu from where al-Kānemi challenged the Sokoto interpretation of Islam in Hausaland.[87] These problems will be discussed in the following section.

(ii) The *Hijra* to Gudu and the beginning of the *Jihād*.

The religious preaching of Dan Fodio, which began in 1774–5 at Degel, gradually led more and more people to the conviction that their salvation in both worlds would only be attained by joining the Community. New converts to Islam were being made, those who were already Muslims were being won over to the Community and a class of scholars was given special training in theology and *ṣūfism*. These scholars, at the head of the ordinary people, were initiated into the Qādiri order and their unflinching loyalty to the Shehu was maintained through their *silsila* and *sanad* chains of authority. The Shehu's religious preaching eventually permeated political life. As early as 1789, the Shehu rejected Sarki Bawa's peace overtures backed by offers of gold and

82 *Ḍiyā'*, p.24.

83 Nafata had it announced in the markets that (a) nobody except Dan Fodio in person was allowed to preach; (b) no more conversions to Islam were to be allowed and those who were not born Muslims should recant; (c) men should not wear turbans nor women veils (see *Tazyin*, p.54, *Infāq*, pp.67, 130). The wearing of turbans and veils was a distinguishing mark of the Community and a symbol of its cohesion (*Tazyin*, p.54). According to *Infāq*, Nafata issued the above proclamation shortly before his death in c. 1802.

84 *Tazyin*, p.55

85 For the career of 'Abd al-Salām and his role in the Sokoto *jihād*, see Last, *Sokoto Caliphate*: see also p.,11 n.93 below.

86 See Adeleye *et al*, 'Sifofin Shehu', *passim*.

87 For a discussion on this, see D.M. Last and M.A. Al-Ḥājj, 'Attempts at defining a Muslim....'

instead asked the former to free the prisoners and not to overburden the subjects with taxes.[88] By the time Nafata was installed as Sarkin Gobir (c.1794–5) it was evident that both parties, in Gobir and at Degel respectively, lived in mutual distrust. The Gobir authorities were naturally eager to crush the 'rebellious' movement of the Shehu, but under Nafata the power of Gobir was declining; Zamfara had been in revolt. Nafata's successor, Yunfa, faced raids from the sultan of Katsina.[89] Another factor was that the authorities of Gobir underrated the weight of the influence of the Community. Sarki Yunfa asked his fellow sultans to come to his aid after the initial military successes of the jihadists, saying that they [at Gobir] left a 'small fire' burning until it had blazed up into a conflagration too formidable for them to extinguish. He urged his brother kings to help him put it out before it burned them as well.

The Shehu on the other hand, was preoccupied with his religious preaching. The development of the idea of a *jihād* in the Shehu's mind is traced below.[90] It suffices here to mention that the Shehu's view in this respect was that the Muslims should rise against an unbelieving ruler only if they have enough power to do so, otherwise they should not. Moreover, if the Muslims are not allowed to practise their religion freely under such a ruler, they have to leave his land. The pre-*jihād* reformist literature claims that the Shehu confined himself to religious preaching and restrained himself from interference in the authority of the rulers.[91] He had maintained a friendly attitude towards them and avoided giving them offence.[92] This is definitely true of the first period in the history of the Community [i.e. before 1795] when the Shehu's main concern was to be left alone to his preaching which was yielding the desired results. He was aware that time was on his side and only such enthusiastic lieutenants as his brother ᶜAbdullāh and his son Bello were unduly impatient to react against the provocations from Gobir. In fact, it was the behaviour of a zealot, ᶜAbd al-Salām, which precipitated the events that led to the *hijra* of 21 February 1804.[93]

The immediate events that led to the *hijra* are well-known;[94] nevertheless, it seems that neither Gobir nor Degel was in favour of an armed conflict at the time. Sarki Yunfa, requested the Shehu to abandon the idea of *hijra* and stay on in Degel, assuring him that he would not attack his Community.[95] However, although the Shehu did not trust Yunfa's promise, he dropped his earlier intention of emigrating outside the domain of the state of Gobir. He informed Yunfa that he was not leaving his country but only moving to Gudu, on the borders of Gobir.[96] This *hijra* of the Shehu is paralleled in Sokoto sources with the *Hijra* of the Prophet from Mecca to Medinā. But in actual fact it was quite different from that of the Prophet, not only because the Fulāni in Hausa land were accustomed to frequent migrations from one place to another, but mainly because the Prophet had fled secretly the night it was planned to kill him and he was pursued by his enemies till they lost any trace of him. In the case of the Shehu, it was no secret that he would leave Degel for Gudu and the preparations for the move took over a month from Ramaḍān to 10 Dhū 'l-Qaᶜda, 1218/1804. The way this migration was undertaken shows that the Shehu was not in a strong enough position to resist the power of Gobir at that particular time. The *hijra* therefore

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88 *Ḍabṭ*, f.12. See also the account in *Anīs*.

89 *Afkār*, f.8. The military problems of Nafata and Yunfa are discussed by Last, *Sokoto Caliphate*, 12–14.

90 *v. infra*, pp. 21-25.

91 *Infāq*, p. 66; cf. *Tazyīn*, p.27.

92 *Infāq*, p.168.

93 *Infāq*, pp.68, 169; *Tanbīh*, f.5v.

94 *Infāq*, pp. 68, 167–9; *Tazyīn*, p.55; *Tanbīh*, f. 5v. For a review of these events, see Last, *Sokoto Caliphate*, pp. 14–15 Hiskett, *Sword of Truth*, 70–3.

95 *Tazyīn*, p. 55.

96 *Ḍabṭ*, f.18r.

must be seen partly as a way of mustering his Community. The Shehu wrote a letter to his son, Bello, who had left Degel after the attack on Gimbana to visit the Tuareg scholar, ᶜAli Agali. The Shehu urged Bello to proceed to Degel with enough support for a *hijra*.[97] The sort of support required may have been animals to carry their belongings and men to help on the way. Bello then left for Kebbi and when he returned to Degel with the required help, he found the Community already on the move to Gudu. ᶜAlī Agali with his following and ᶜAbd al-Salām's supporters helped the Shehu to migrate and were ready to protect him on the way to Gudu.[98] When they reached their destination, the Shehu found that ᶜAlī Jedo, who later became the leading general of the *jihād*, had built a house for him there.[99] It seems that no attack from the Gobir army on the migrants was seriously anticipated on the way to Gudu nor does such an attack appear to have been contemplated at Alkalawa.

Gudu thus became the centre of massive immigrations from all over the country. The leaders of the Community undertook campaigns urging their followers to move to Gudu, portraying Yunfa as an unbelieving ruler under whom Muslims could not practise their faith freely. His animosity towards Islam was further proved by his attack on Gimbana and his threat to Degel. The massive immigrations greatly alarmed Yunfa who thereupon banned any movement towards Gudu while his men embarked on harassing Muslims on the way to the Shehu. But the Muslims continued to migrate. Under the circumstances, Yunfa had no choice but to appeal to the Shehu to return to Degel.[100] The terms which the Shehu offered for his return to Degel show the religious character of his *jihād*. He stipulated that Yunfa should repent and become a true Muslim in all his dealings; to treat all men with equity and justice; to return all property he had confiscated and to free all men he had taken captive. Sokoto writings, however, claim that Yunfa, acting on the advice of his Muslim counsellors, refused the Shehu's terms,[101] and threatened to subdue the Shehu by force.[102] It was then that the Community elected the Shehu as their *Amīr al-Mu'minīn* [Commander of the Faithful], fortified their camp at Gudu with a trench and proceeded with their plans of war against Gobir. This was not only the formal proclamation of the *jihād* but also the birth of the Caliphate.[103] There had been sporadic skirmishes between Yunfa's men and the Community but from now on, large-scale military operations were undertaken.

In refusing the peace terms of the Shehu, Sarki Yunfa had quite underestimated what the forces of the Community could achieve. Immediately before the battle of Tsuntsua, Sarkin Gummi of south-west Zamfara[104] offered to mediate between the two leaders. Yunfa was ready this time to concede to the Shehu whatever terms the latter would demand[105] and delegated his Galadima, Doshero, to negotiate the terms. The balance of power had already changed by this time. When the *hijra* started, the Community had not felt strong enough to face the power of Gobir. But when the *jihād* began, they were victorious in all their campaigns. The important towns of Matankari and Konni were seized. Then a major victory, celebrated in the *jihād* writings as the parallel of the battle of Badr, was gained against the Gobir army at Tabkin Kwotto.[106] The Tabkin

97 *Infāq*, p.68.

98 ibid, pp. 68–9.

99 *Rawḍ*, f. 8r.

100 *Infāq*, p.69.

101 ibid.

102 ibid.

103 For a discussion of the *jihād* campaigns, see Last, *Sokoto Caliphate*, pp. 23–40.

104 He supported Gobir while the other Sarakuna in Zamfara such as those of Burmi, Mafara and Donko sided with the Shehu after the battle of Tabkin Kwotto (*Infāq*, p. 82).

105 *Infāq*, p. 84.

106 *Tazyīn*, p. 57ff. The Battle of Badr (624) was the Prophet's first major victory over the Meccans and the turning point in the fortunes of the young Muslim community.

Kwotto victory was followed up with the seizure of a number of towns on the northern and western flanks of Gobir.[107] These early victories kept the morale of the triumphant fighters high. With a chain of Muslim victories, new supporters were won over to the *jihād*.[108] It was at this stage that Sarkin Gummi offered to mediate between the Shehu and Yunfa.

The legal justification of *jihād*, as mentioned above, is that Muslims should rise against an unbelieving ruler if and when they have the power to do so. The Shehu's *jihād* had by then proved that the Community could continue its *jihād* until it established Islamic rule in Gobir. The Shehu's terms for reconciliation with Sarkin Gobir, however, were not stipulated. Instead, the Shehu demanded that Yunfa should come in person to meet him.[109] This Yunfa declined to do. The *jihād* continued. One question which arises is whether the Shehu would have been content with the terms he had demanded from Yunfa just before the proclamation of *jihād*, if Yunfa had acceded to them then? Would he have agreed to abolish the post of Commander of the Faithful and the other appointments already made, according to the *Sharīʿa*? Would he have allowed any aspect of the Islamic state he was establishing to be annulled? Most probably the Shehu would have sought a formula within the context of Islamic government whereby, though he as *amīr al-mu'minīn* could not be deposed for any consideration short of polytheism *(shirk)*, Yunfa might continue to enjoy some degree of secular administrative authority.

However, an important consideration is that by November 1806, when the *Bayān* was completed, matters had gone far beyond reconciliation between the Shehu and the Gobir authorities. A large area of Gobir had been won, Kebbi and Zamfara, though equivocal, had suffered defeat. The *jihād* had spread to Katsina, Daura, Kano and other areas and the Caliphate had emerged beyond the embryonic stage. Clearly, the new policy needed guidance in both the prosecution of the *jihād* and in the principles of administration. The *Bayān*, it may be deduced, was therefore written at that time to give urgently needed advice and guidance to the provincial administrators *(nuwwāb)* and the generality of the new but widely dispersed *umma*.

3. *The Ideas of the Bayān:*

(i) The historical development of ʿUthmān dan Fodio's ideas

The voluminous writings of the Fulani leaders of Sokoto, Dan Fodio, ʿAbdullāh and Bello, appear to be unprecedented in the reform traditions of the Western Sudan. Although they repeatedly complained of being under the pressure of preaching, *jihād* and then administration, they did not tire of writing. Their works written in Fulfulde and Hausa have not yet been fully investigated but we are now in a position to appreciate the extent of their compilations in Arabic. Eighty-eight works of Dan Fodio have so far been recovered, sixty of Abdullāh's and seventy-eight of Bello's.[110] ʿAbdullāh and Bello wrote on a wide variety of subjects. Apart from the pure religious sciences on which both wrote, works on prosody and rhyme, grammar and philology came from ʿAbdullāh's pen, while Bello compiled more than ten works on aspects of medicine. Dan Fodio however, wrote all his works on the pure religious sciences: *tawḥīd*, *fiqh* and *taṣawwuf*. Following the classical Islamic tradition, he often deals with all the three sciences in the same

107 *Infāq*, p. 80ff.

108 *v.supra*, *p.* 12 *n.* 104

109 *Infāq*, p. 84.

110 The fullest list so far compiled is that of Last (*Sokoto Caliphate*, pp. 236–48) Many additional titles of works by these authors have been mentioned by various sources and it is believed that a great number of them can be recovered from individual collections kept by malams all over West Africa and to the east as far as the Republic of the Sudan. The Northern History Research Scheme (Zaria), the library of the University of Ibadan and the Centre of Arabic Documentation, Ibadan, have already recovered a large number of works attributed to Sokoto writers.

work, even though more emphasis is laid on one or the other, He wrote over fifteen works on *ṣūfism*, twenty-one on *fiqh* and more than thirty-three either wholly on *tawḥīd* or closely related to it; if we may add to these his writings on Mahdism, the latter category would exceed forty-three.

The scope of this introduction allows no room for a full analysis of Dan Fodio's ideas on *taṣawwuf*, *tawḥīd* and *fiqh*. But to place his *Bayān* in its proper context, I shall trace briefly, through his writings, how his ideas developed from mere preaching against *bidʿa* into a coherent system to be spread by *jihād*. Of the three branches of Dan Fodio's scholarship, only *fiqh* and *tawḥīd* are to be considered in detail but the third, *taṣawwuf* will be referred to when it seems to have influenced the history of the Community.

The definition of *fiqh* [jurisprudence], according to Ibn Khaldūn, is 'knowledge of the rules of God which concern the actions of persons who own themselves bound to obey the law respecting what is *wājib* [obligatory], *maḥẓūr* [forbidden], *mandūb* [recommended], *makrūh* [disapproved] or merely *mubāḥ* [permitted]'.[111] *Fiqh* extends to the obligation of the faithful to enforce the law, hence *hijra* , *jihād* and the establishment of Islamic rule. This is the theme of the *Bayān*. On the other hand, *tawḥīd*, dogmatics or theology, is indivisible from *fiqh* because it deals with the Divine Unity which is contained in the first article of faith.

On these two sciences, *tawḥīd* and *fiqh*, Dan Fodio produced over seventy-three works which are mainly compilations derived from the works of earlier scholars. He never claimed any originality in his scholarship; on the contrary, he often pointed out that he was repeating the ideas of the Sunnī scholars. 'Nothing is my own' he declares in his *Naṣā'iḥ*, 'in all that I have elaborated to you, I am only following the footsteps of Sunnī scholars so as to bring to your notice what they have said. I have never mentioned anything without ascribing it to its author. If you wish, you can look up every book from which I have quoted.'[112] Besides quoting the ideas of the earlier scholars, Dan Fodio repeats himself in several of his works. His contemporaries must have asked genuinely or, out of envy, as Bello supposes,[113] why it was that he wrote so many books. He replies in his *Kashf*, 'Every scholar knows the *himma* [zeal and aspirations] of his contemporaries because [on this point], he is more knowledgeable [than previous scholars]; therefore every scholar's compilations are of more use to his people than those of the [earlier] authors.'[114] The general theme of his preaching followed closely that of his writings.[115] Whether his writings were lecture notes for his preaching, as Last has proposed,[116] or his preaching was later copied down and circulated, both his preaching and writings were cast in the same mould.[117] Together they formed his platform for religious reform in Hausaland. To fight what he regarded as inconsistent with the *Sharīʿa* and to guide his *jamaʿa* in the way approved by the Sunna he 'brought to their notice' what the earlier scholars had said. Whenever he required to correct a particular practice or eradicate an evil persisting from former times, Dan Fodio would reproduce materials from his earlier works and circulate them under new titles.[118]

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111 Ibn Khaldūn, *Muqaddima*, i, p. 804.
112 *Naṣā'iḥ*, last folio; see also his introduction to *Najm al-ikhwān* and *Naṣīḥat ahl al-zamān*.
113 *Infāq*, p.37.
114 *Kashf mā 'alayhi*, Chap. X. See also the closing remarks in his *Najm al-ikhwān*.
115 See his *Kashf mā 'alayhi*, Chap. X; Bello, *Turjumān*, *passim* and *Infāq*, pp. 47–67.
116 *Sokoto Caliphate*, p.9, n. 35.
117 Bello, (*Infāq*, *p.65*). says that Dan Fodio sometimes taught his own compilations. Dan Fodio himself recommends that priority should be given, in teaching, to some of his works such as *Mawāḍiʿ awhām al-ṭalaba* and *Miṣbāḥ al-muhtadīn*.
118 For instance after the *Bayān*, Dan Fodio wrote *Bayān wujūb al-hijra wa-taḥrīm muwālāt al-kafara wa wujūb muwālāt mu'minī 'l-umma* which is taken from the *Bayān:* then he wrote in Muḥarram 1227/Jan. 1812 his al-*al-Amr bi muwālāt al-mu'minīn wa'l-nahy 'an muwālāt al-kāfirīn*. The first part of this book is identical to chapter V of the *Bayān* and the second part of it does not differ much from chapter IV. of the *Bayān* except for some additional citations from the earlier scholars.

An attempt to trace the development of his ideas in his repetitive works, which exceed seventy-three on *tawḥīd* and *fiqh*, requires that we first arrange these titles in their chronological order. He was not in the habit of dating his works especially before the *jihād*. Only five pre-*jihād* works of his, bear dates, but in the 1220s (1805–14), he dated fourteen of his compilations. ᶜAbdullāh and Bello, too, rarely gave dates to their writings before the *jihād*. The former dated twelve before the *jihād* and twenty-eight after it, the latter dated two before and seventeen afterwards. In the absence of dating for most of Dan Fodio's works, other contextual and internal references are to be looked for. The writings of ᶜAbdullāh and Bello would be helpful in this respect if they referred to Dan Fodio's writings. But the three of them go back separately to the same original works for their references. One would expect that ᶜAbdullāh and Bello would quote Dan Fodio regarding him as the authoritative leader of their school of thought. Only in 1220s A.H. when ᶜAbdullāh entered upon a theological controversy with Dan Fodio, did both refer to each other's works.[119] Bello, on the other hand, listed in his *Infāq* twenty-seven[120] of his father's works, six of which have not yet been recovered; four others had already been dated by the author and the remaining seventeen may be dated simply as pre-1812, the date the *Infāq* was completed.

A major help in dating Dan Fodio's works is the fact that his writings reveal much of the religious history of his Community; on the other hand, the known history of the Community itself helps to determine the probable periods in which many of his writings were compiled. For instance when the appointment of *qāḍīs* is mentioned in a work, or sympatnetic advice is given to *amīrs*, the work must have been written after the *jihād*. When Dan Fodio states that 'enjoining the right...... is not necessarily dependent upon the presence of an *imām*', we may conclude that the work dates back to the time of the Habe regime. Besides such contextual and internal evidence, the general tone of a work speaks for itself.

At the beginning of his career and up to the time when *jihād* was anticipated around 1795, his tone was mild. Then when he felt that his activities were being rewarded and his Community was becoming larger and more influential, the tone of his writing became less tolerant. This period is also marked by a deeping of the mystical side of his personality and the beginning of visions.[121] When the *jihād* proved successful and Islamic rule was established at Sokoto, he relaxed and even regained a milder tone. This was his most bold and creative period of writing.

The above three stages of Dan Fodio's ideas seem to correspond with three periods in the history of the Community: (i) The period prior to c.1795; this can be regarded as a formative period in the history of the Community when Dan Fodio hoped to 'change from within'. By the end of this period his former students were busy preaching in their respective areas, Dan Fodio's preaching tours had come to an end and he was staying at his centre in Degel receiving 'most of the country, the common people and the notables.'[122] The power of Gobir was then in decline. Sultan Yaᶜqūb was killed in battle in c.1209/1794–5 and his brother Nafata was installed.[123] The famous edict[124] which Nafata proclaimed to curb the influence of the Community came as a consequence

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119 See *Sirāj al-ikhwān* (1226/1811), *Miṣbāḥ ahl al-zamān* (before 1227/1812) or *Ḍiyā' ūlī 'l-amr wa 'l-mujāhidīn* (1225/1810) and *Najm al-ikhwān* (1227/1812) by Dan Fodio and *Ḍiyā' al-sulṭān* (1227) by ᶜAbdullāh. Bello also wrote *Kaff al-ikhwān* (1226/1811) on this conflict between his father and his uncle.

120 *Infāq*, p. 187.

121 *v. supra*, p.4 He had seen a minor vision four years before; see his *Wird*, p.1. In *Amr al-sā'a wa-ashrāṭuhā*, he mentions that minor visions appeared to him from his boyhood till the age of thirty-one when he had seen the major experience which is related in *Wird* as having happened at the age of 40 years, 5 months and a couple of days.

122 *Tazyīn* p.41.

123 Last, *Sokoto Caliphate*, p. 12; see also *Afkār*, f. 8 r.

124 *v. supra*, p. 10

of its impending threat to the authority of Gobir. (ii) The second period in the history of the Community began around 1795 when a clash with the Gobir authorities was anticipated and extended until 1808 when Alkalawa fell and the last sultan of Gobir, Yunfa, was killed. We can sub-divide this period into two parts: (a) 1795–1804 and (b) 1804–1808. The first part of this period was characterised by preparation for a possible clash with Gobir, although Dan Fodio hoped to avoid it. The second part was occupied with the *hijra* and the *jihād*. (iii) The third period (1808–1817) was when the Sokoto Caliphate was being established. The Community was in power, but new problems of consolidating their authority and those of administration presented themselves.

As already noted, Dan Fodio's ideas developed according to the circumstances and needs of the three periods in the history of the Community. Bearing in mind the historical situation in every period and its main characteristics we shall trace the development of his ideas in the following pages. We have, however, selected those aspects of his ideas in *fiqh* and *tawḥīd*, which are relevant to the subject-matter of his *Bayān*, on the one hand, and in which development is traceable on the other: *bidᶜa* and *takfīr*, *hijra* and *jihād*. This selection excludes the general works on *ṣūfism* and works meant to teach the basic tenets of Islam without specific bearing on what was practised in Hausaland. These themes are discussed below.

(ii) Innovation *(bidᶜa)* and Anathematisation *(takfīr)*.

The first Arabic poem Dan Fodio composed, at the beginning of his preaching activities in 1188/1774–5, set forth his programme to which he remained loyal for the rest of his life. In his praise for the Prophet, he used *ṣūfī* terminology such as *gharām, shawq, ḥubb, ᶜishq* (love), *nūr, nār, shams* (light), *rayya, ᶜabīr, ᶜarf, ṭīb* (fragrance), and *misk* (musk).[125] This *ṣūfī* tendency was developed later through austere living, fasting, meditation and going into occasional retreats.[126] By the beginning of the second period in the history of the Community, he claimed to have communion with the Prophet and at the end of his career, he announced that he had reached only two stages below the highest rank in the *ṣūfī* hierarchy.[127] As a *faqīh*, Dan Fodio declared himself in his first Arabic poem to be a *muqtadī*—one who modelled his life on what the Prophet had said.[128] Thus, from as early as 1774–5 Dan Fodio, had declared himself a staunch defender of the Sunna and an opponent of *bidᶜa*.[129]

The earliest influence that drew Dan Fodio's attention to the problems of Sunna and *bidᶜa*, was that of his uncle ᶜUthmān Bindūri whom Dan Fodio took 'as his example in words and deeds; he accompanied him for two years and moulded himself to his pattern of piety in enjoining the right and forbidding the wrong.'[130] Having studied under Bindūri and composed his first Arabic poem, Dan Fodio then went to study under Jibrīl b. ᶜUmar,[131] about whom he said after the *jihād*, 'I do not know if we would have been guided to the way of [reviving the] Sunna and the

125 The theologians say that man should worship God and obey His orders so as to win His favour and be rewarded in the two worlds. Fear of God and of the wrath to come are the basis of worship. The *ṣūfīs*, on the other hand, emphasise love and adoration for God and His Prophet. Rābi'a al-ᶜAdawiyya (d.801 A.D.) used to say: 'It is a bad servant who serves God from fear and terror or from the desire of a reward' (quoted in John Alden Williams, *Islam*, New York, 1962, p. 143). The *ṣūfīs* use images and terminology taken from the language of human love to express their relations with God and His Prophet. The words used here by Dan Fodio fall clearly into this category.

126 *Rawḍ*, f. 6.

127 See *Taḥdhīr*.

128 *al-Qaṣīdat al-dāliyya*, line 45.

129 *Tazyīn*, p.27; *Infāq*, p.30

130 *Idā'* p. 554.

131 See El-Masri, 'Early life..', p. 438.

quelling of *bid^ca* had it not been started by this *Shaykh*. For it was he who began to destroy evil practices in this Sudanic land of ours and his work was completed at our hands.'[132] Though Dan Fodio was influenced by Bindūrī to combat innovations, his association with Jibrīl in particular, must have stamped him as an uncompromising defender of the ideals of Islam. We are inclined to believe that by the time Dan Fodio was studying under him, Jibrīl had not yet advocated his neo-khārijite doctrine of branding Muslims as unbelievers on account of grave sins.[133]

The kinds of *bidᶜa* which Dan Fodio was anxious to quell at the beginning of his mission, however, were the survivals of un-Islamic practices and certain unorthodox modes of worship which were followed in Hausaland. *Bidᶜa* arising from traditional local custom were practised by the fifth category of people in Hausaland as classified by Dan Fodio. Those people, he says 'have accepted Islam but failed to abandon such acts of unbelief as veneration of stones and trees . . . .'[134] In a work written around the end of the first period in the history of the Community,[135] Dan Fodio attacks such *bidᶜa* and in so doing brings into prominence some of his characteristic ideas. He attacks divination and declares that anybody who claims to have knowledge of the future (*'ilm al-ghayb*) is an unbeliever, since only God knows what is to come.[136] Yet he warns the laity not to rise against *bidᶜa* which were commonly practised by Muslims. It is only the *ᶜulamā'* who know how to deal with such widespread innovations. Any one other than the *ᶜulamā'* who has attained some degree of knowledge should only make use of it to guide himself.[137] In another work[138] written at about the same period, he makes this last point clearer. Every Muslim has to disavow *bidᶜa* practised by others. But if his disavowal might incur danger for him, he must mind his own business.[139] The allusion here is clearly to the fact that the unorganised interference of the ordinary Muslims in peoples' religious practices might incur the wrath of the Habe authorities. This fear later became a reality when Sultan Nafata announced his famous edict against the Community.[140]

Unorthodox modes of worship which were practised in Hausaland were also attacked vigorously by Dan Fodio. These are elaborated in his *Bayān al-bidaᶜ al-shayṭāniyya* which lists a wide range of innovations and classifies them into *jā'iz* [unobjectionable], *makrūh* [disapproved], and *ḥarām* [forbidden]; none of these constitutes unbelief in itself, rather they make a man 'disobedient'. The same theme is taken up again at a later date in the longest work written by Dan Fodio. The title of this work is *Iḥyā' al-Sunna wa ikhmād al-bidᶜa*[141] which is reminiscent of al-Ghazālī's *Iḥyā' ᶜulūm al-dīn* and upon which it draws extensively. A third major work on the subject is *Ḥiṣn al-afhām*[142] which was compiled in the prime of Dan Fodio's scholarship in 1225/1810. These last two works show the insistence of the author that people should look back to the early centuries of the *Hijra* and imitate the religious practices of that era. In this endeavour, he

132 *Naṣā'iḥ*, ch. 3; see also *Infāq*, p.27.

133 *v. infra*, pp. 18-19.

134 *v. supra*, p. 7-8

135 *Ittibā' al-Sunna wa tark al-bid'a*, ms. Ib. 82/56.

136 Throughout his life, Dan Fodio considered divination to be *shirk*. He mentions in particular the artifice of *jafr* or *'ilm al-ḥurūf* whereby diviners foretell the future by the secret numbers attached to the Arabic letters. See his *al-Ajwiba al-muḥarrara*, ms. CAD/140, question No. 11.

137 ibid.

138 *Bayān al-bida' al-shayṭāniyya*, ms. Ib 82/334, p.

139 *ibid.*

140 *Infāq*, 67, 130; v. supra, p. 10 n. 83.

141 The *Iḥyā' al-Sunna* (written 1795) has been edited by I.A. B. Balogun (Ph.D. thesis, University of London, 1965), but this edition remains as yet unpublished. The only published version is an uncritical Cairo printing, 1962. An analysis of the *Iḥyā'* by Balogun appears in *Research Bulletin* (CAD), vi (1970), pp.13–41.

142 *Ḥiṣn al-afhām min juyūsh al-awhām*, publ. Cairo, 1377/1957–8.

is not unlike those regarded as *salafī*. In his introduction to the Cairo edition of the *Iḥyā'*, Dr. Muḥammad al-Bahay, a former rector of Al-Azhar, concluded that Dan Fodio can rightly be called a *salafī*. He also considers that Dan Fodio was influenced by Ibn Taymiyya's works and by Wahhābī ideas.[143] But the committee of scholars from al-Azhar who edited the *Iḥyā'*, failed to take cognizance of Dan Fodio's views on the validity of intercession (*tawassul*) by the Prophet after death. Both Ibn Taymiyya and Ibn ᶜAbd al-Wahhāb regarded any belief in posthumous intercession by the Prophet or a *walī* as *shirk*.[144]

Dan Fodio's views on what was *bidᶜa* and what was Sunna remained consistent, except when the views of the *fuqahā'* conflicted with some practices of leading *ṣūfīs*. For instance, listening to music and beating of drums had been condemned by the majority of the *fuqahā'*; whereas *ṣūfīs*, such as al-Shaᶜrānī, allowed them. Dan Fodio clearly saw the validity of the arguments advanced by the *fuqahā'*, yet he concluded that these practices should not be considered *ḥarām* since some scholars had allowed them.[145] He reacted similarly when gold and silk were seized from the Habe sultans and used by leading members of the Sokoto *jihād*. Dan Fodio was prepared to accept the views of less authoritative scholars to substantiate his views on the permissability of wearing of gold and silk temporarily as a token of thanksgiving to God for granting them victory. ᶜAbdullāh, however, vehemently attacked these concessions and this conflict of ideas will be discussed below.

The development of Dan Fodio's ideas relating to *takfīr* can be clearly traced. The necessity for formulating clearly defined rules for anathematization arose from the local situation in which may indigenous customs had been retained by Muslims; some of these might be tantamount to 'unbelief' for though a man might accept and pronounce the articles of faith, some of his actions could lead to his being adjudged an unbeliever. This is, of course, the perfectly orthodox point of view. Subsequently, other scholars pronounced two further and less orthodox bases for anathematization and these began to gain currency in Hausaland.[146] These were *takfīr* on account of grave sins (*kabā'ir*) and for ignorance of speculative theology. To brand Muslims as unbelievers if they committed grave sins, such as taking alcohol, is peculiar to the Khārijites.[147] The question arises as to whether this view belonged to the tradition of the area[148] or whether it was a recent importation.

Several facts incline us to the latter view and that Jibril. b. ᶜUmar imported it on his return from his second pilgrimage to Mecca. It is well established that Jibril taught Dan Fodio for one year when the former was about to go to Mecca for the second time in the late 1770s. On his way back, Jibril and his son ᶜUmar studied under the Shāfiᶜī lexicographer and scholar, Murtaḍā al-Zabīdī[149] from whom they obtained in 1784 an *ijāza* to transmit a number of *asānīd*.[150] When

143 See *Iḥyā'* (Cairo, 1962), p.iii.

144 Ibn Taymiyya, *Qā'ida jalīla*, (Cairo, 1373/1953/4), p. 20; Muḥammad b. 'Abd al-Wahhāb, *Kitāb al-tawḥīd* (Riyad; 1376/1956–7), p.41.

145 For a discussion on this, v. infra pp. 30-1.

146 See the *Naṣā'iḥ*, Ch. III and Dan Fodio's *Shifā' al-ghalīl* ms. Ib. 82/465.

147 See *EI* (1), art, Khawārij.

148 For early Khārijite (Ibāḍī) influences in West Africa, see section (n) of Lewicki's art. 'al-Ibāḍiyya' in *EI* (2) and the references cited there. Since the rise of the Almoravids in the second half of the 11th century the predominant Islamic influence in west Africa has remained Mālikī Sunnism. There is no clear evidence that Khārijite ideas had any currency after this period in the Western and Central Sudan.

149 Abū 'l-Fayd Murtaḍā b. Muḥammad al-Zabīdī (1732–91), a scholar of Indian origin, spent his latter years in Cairo where he compiled the voluminous *Tāj al-ᶜArūs* lexicon and an extensive commentary on Al-Ghazālī's *Iḥyā'*. (*GAL.* II, p. 371 and *S* II, pp. 398–9.) He also wrote a number of works on *salāsil*. He was not known to hold Khārijite views, nor can this be deduced from his treatment of words like *Khawārij* and *Kabā'ir* in the *Tāj*. On the contrary he was a known follower of Al-Māturīdī's doctrine which admits 'assurance of salvation' to any Muslim who pronounces the articles of faith, a view diametrically opposed to Khārijite beliefs.

they returned, Dan Fodio visited them at Gudu with ᶜAbdullāh in 1201/1786–7, but spent only two days there, though ᶜAbdullāh stayed on for about two months.[151] It was on this occasion that Dan Fodio received all the *asānīd* which Jibrīl and his son transmitted on the authority of Al-Zabidi.[152] On another occasion after Jibrīl had left Gudu for Maji, ᶜAbdullāh visited him and presented him with a poem in his praise.[153] It is most likely that it was on this occasion that ᶜAbdullāh made a copy of Jibrīl's prose work on *takfīr* and showed the latter his objections to its contents.[154] These ideas were later versified by Jibrīl and it was from the versification[155] that Dan Fodio knew of Jibrīl's ideas on *takfīr*, and to which he replied in *Shifā' al-ghalīl*. In both this work and his *Naṣā'iḥ*, which was written after Jibrīl's death, Dan Fodio tried to exonerate Jibrīl from the charge of holding the Khārijite view that anyone who commits a major sin is an unbeliever. In the *Naṣā'iḥ*, Dan Fodio quotes the argument which ᶜAbdullāh had with Jibrīl on the issue in their last meeting at Maji. He gives the impression that he only knew of Jibrīl's views from the verse abridgement, for if he had had any chance of meeting Jibrīl after his views were known to him, he would have discussed the problem and would have referred to their meeting in his writings

Two facts seem to emerge concerning this doctrine of *takfīr*. The first is that these Khārijite views were spread in Hausaland by Jibrīl b. ᶜUmar, as Dan Fodio explicitly mentions in his *Naṣā'iḥ*.[156] The other fact is that it was after his return from the second pilgrimage that Jibrīl spread these views in Hausaland. Jibrīl was praised for his activities against innovations by the Sokoto writers and there is evidence that his activities were leading up to a *jihād*.[157] But Dan Fodio's writings distinguish clearly between praise for Jibrīl's activities against innovation and condemnation of his later Khārijite views. However, the influence of Jibrīl's views on *takfīr* seems to have been short-lived, since Dan Fodio's writings make little reference to them after the discussions in the *Shifā'* and *Naṣā'iḥ*.

Both *Shifā'* and *Naṣā'iḥ* stand out as creative contributions in Dan Fodio's scholarship. Apart from quoting earlier scholars, Dan Fodio took pains to prove that so long as a Muslim believes in the *Sharīᶜa*, any act of major sin makes him only 'disobedient', for which temporary punishment in the other world is prescribed. Dan Fodio's habit in his compilations was to keep close to the wording of the texts he quoted. But it seems that long drawn out controversies obliged him, as in this case and his conflict later with his brother, to adopt a more fluent style and use his own words to develop his arguments.

Further, Dan Fodio attacked the advocacy by the exponents of *ᶜilm al-kalām* in Hausaland that ignorance of *kalām* constituted a ground for anathematization. Dan Fodio in his early writ-

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– Hiskett's view (*Bull. SOAS* xxv(1962) p. 596), that Jibrīl was directly influenced by the theological climate of Arabia though plausible, remains to be proved. However, it is not easy to imagine that a leading *ṣūfī*, such as Jibrīl, would be influenced by the doctrines of Wahhābism which is strongly opposed to *ṣūfism*.

150 *Infāq*, p. 29. *Asānīd*, pp. 18–19.

151 *Tazyīn*, p. 31; *Idā'*, p.557.

152 See *Infāq*, p. 29, *Idā'*, p. 577.

153 *Tazyīn*, p.32

154 See Dan Fodio, *Naṣā'iḥ* chapter III. It is from this work that we know of the existence of a prose work by Jibrīl on *takfīr*, though no copy has yet been 'recovered'.

155 The whole poem is quoted in *Naṣā'iḥ*; see also A.D.H. Bivar, and M. Hiskett, 'The Arabic Literature of Nigeria to 1804: a provisional account', *Bull. SOAS*, xxv (1962), pp. 141–142.

156 Ch.III.

157 Northern Nigeria: *Historical notes on certain Emirates and Tribes*, ed. by J.A. Burdon, 93. cf. *Ḍabṭ*, (f.19) which mentions that Jibrīl was expelled by the Tuareg from the Air region because he attempted a *jihād*. *So he proceeded to Mecca on the second pilgrimage*, (the italics are mine).

ings of the first period, described *kalām* as one of the Islamic sciences.[158] But even in that early period he used to warn against indulgence in speculative *tawḥīd* which, according to him, formed a 'sea in which many people were drowned.' So to quote the statements of *ahl al-kalām* would only lead others astray. He thanked God that such deviant groups who indulged in speculative theology were not found in his days in Hausaland.[159] Then his writings on the subject gradually changed from warnings not to indulge in the study of *kalām* to saying that a deviant group of such students had now in fact emerged in Hausaland. He then began to attack the exponents of *kalām* and finally designated them as unbelievers.

In *Mawāḍiᶜ awhām al-ṭalaba*, Dan Fodio says, 'O brethren, in this Sudanic land of ours, a group of *ṭalaba* who anathematize the common Muslims has emerged. They say that whoever does not read *ᶜilm al-kalām* is an unbeliever.'[160] He warns that since only the very intelligent among the *ṭalaba* can read this science, others should be content with the basic books on *uṣūl al-dīn*. However, he recommended his *Mawāḍiᶜ* to be given priority in teaching to enlighten them first before they are introduced to the works of earlier scholars on the subject. The main influence of *kalām* on the *ṭalaba* was from the writings of al-Sanūsī (d.1486). Dan Fodio compiled a work to prove that al-Sanūsī himself had changed his views afterwards and accepted the approved Sunnī concept of not anathematizing any Muslim for failure to learn the theories of *kalām*.[161] Nevertheless, the exponents of *kalām* persisted and Dan Fodio gradually stepped up his attacks on them. In his *Farq*[162] for example, he shows the distinction between *uṣūl al-dīn* and *ᶜilm al-kalām*, the latter of which embroiders the former with speculative arguments, philosophy and the ideas of innovators (*ahl al-bidaᶜ*). He apologises however, to those who loved *kalām* that he neither intended in that book to discredit *kalām* nor to defame those who studied it.[163] But it seems that the exponents of *kalām* were numerous and causing real confusion among the Muslims. The fact that they were so numerous, indicates that Islamic learning had attained a high level in Hausaland by the outset of the *jihād*. Being the most speculative and philosophical subject among the Islamic sciences, *kalām* could only be approached at an advanced level of learning. In 1785 when Dan Fodio compiled his *Miᶜrāj*, he merely explained what *kalām* was, but in his later *Mawāḍiᶜ* he mentioned that this science was becoming popular.[164] He then compiled several books to combat its influence among the learned. It was a newly introduced science and perhaps had a greater appeal to the younger scholars who had begun studying under the influence of the impetus which Dan Fodio had given to Islamic learning. In this connection it is interesting to note that Dan Fodio always refers to the *ṭalaba* when he attacks exponents of *kalām*.

However, it seems that Dan Fodio had defeated the influence of *kalām* in Hausaland by the third period in the history of the Community. Only passing references are made to *kalām* in his late works such as *Ḥiṣn al-afhām* (1225/1810–11) and *Tamyīz al-Muslimīn*.[165] In his *Ifḥām*, he challenges the *ᶜulamā'* who showed opposition to his activities,[166] and the way in which he talks down to his opponents in this work shows that he had triumphed over opposition, particularly that of the *ahl al-kalām*. He declares himself to be a *mujaddid* and reformer (*muṣliḥ*) and goes out

158 e.g. *Mi'rāj al-'awāmm* (1199/1784–5), ms. Ib. 82/257); *Mir'āt al-ṭullāb*, ms. Ib. 82/508; *Kifāyat al-muhtadīn*, ms. Ib. 82/268.

159 *Ḥaqīqat al-īmān wa 'l-Islām*, ms. Ib., 82/256.

160 ms. Ib. 82/119.

161 *Rujū' al-shaykh al-Sanūsī 'an al-tashdīd ilā 'l-taqlīd*, a copy in the author's possession.

162 *Al-farq bayn 'ilm uṣūl al-dīn wa bayn 'ilm al-kalām*, ms. Ib. 82/79.

163 ibid.

164 *vide supra*.

165 Analysed *supra*, *pp*. 7-8.

166 *Ifḥām al-munkirīn*, Cairo, 1959.

of his way to boast of his learning and superiority. He quotes al-Suyūṭī's words in a similar situation, 'If I met you in a place and we recalled our achievements and I blew upon you, you would be scattered like dust,' adding, however, 'This statement shows thanks (to God) not boasting .... If you think that I am making a boast, well let it be. I boast of Divine favours.'[167]

(iii) *Hijra* and *jihād*

Dan Fodio's writings on the *hijra - jihād* theme also reflect the history of the Community. In the first period, he propagated the fundamentals of Islam including *ṣūfism* which he regarded as an essential element. This was the formative period in which he emerged as sole leader and the majority of the other *ᶜulamā'*, together with their *jamāᶜas*, began to rally around him. Any attempt to preach for a *jihād* would have been suicidal at this stage. Even in his preaching classes, where one would expect that instructions not for publication were to be imparted, Dan Fodio did not instruct his following in politics.[168]

The first reference to *jihād* occurs in a work entitled *Hidāyat al-ṭālibīn*[169] where he quotes a Prophetic tradition 'I enjoin on you five things with which God has entrusted me—hearing and obeying [i.e. absolute loyalty], *hijra, jihād* and *jamāᶜa*.' The style and the contents of the *Hidāya* show that it is an early compilation[170] except for the above tradition which enjoins obedience to men in authority who, in the context of Hausaland at that time, were the Habe kings. It is true that Dan Fodio avoided causing offence to the Habe rulers in his early years but he would not go as far as quoting Prophetic *ḥadīth* to persuade Muslims to obey them.[171] If this is so, we must assume that his purpose in quoting this *ḥadīth* was primarily to explain the obligation of *hijra, jihād* and *jamāᶜa*. A more obvious reference to *jihād* is in his *Sawq al-umma*[172] where he includes a chapter on *jihād* after dealing with *ḥajj*, the fifth article of faith. The same sequence is repeated in his *Wird* which is a late compilation. Of course it was customary for the early Muslim writers to find room for *jihād* immediately after *ḥajj* in their general works on *fiqh*. In the *Mukhtaṣar* of Khalīl and al-Qayrawānī's *Risāla*, for instance, *jihād* is discussed after the chapter on *ḥajj*. But it had not been customary for Dan Fodio to do the same in his early writings. He often ended his works on *fiqh* without reference to *jihād* as was the case in *ᶜUlūm al-muᶜāmala*.[173]

The claim of the Sokoto writers that a successful *jihād* by Dan Fodio was predicted before he was born, lacks any support from his writings. As his works after the *hijra* show, Dan Fodio regards his *jihād* as a favour conferred on him by God,[174] since every preacher considers *jihād* as the crown of his achievement for which the greatest reward is anticipated in the Hereafter. The idea of a *jihād* with obvious bearing on Hausaland appears first in Dan Fodio's work entitled

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167 ibid, p. 27. Cf. Al-Shaᶜrānī's attitude. See R. Nicholson, *Literary History of the Arabs.*, Cambridge, 1907, p. 465.

168 Dan Fodio's preaching themes are discussed by Muḥammad Bello in his *Infāq* (pp.47–62) and *Turjumān* (written 1217/1802). Dan Fodio himself gives a summary of his preaching subjects in his *Kashf mā 'alayhi*, f. 16r.

169 ms. Ib. 82/137.

170 The chronology of this work is discussed below in section 3(v).

171 Nowhere in his writings, so far as I know, does Dan Fodio actually urge his followers to obey the Habe authorities. But he always repeated a formula of prayers attributed to 'Abd al-Qādir al-Jaylānī: 'O, God lead the rulers and the ruled aright and unite their hearts in doing good.' (See Bello, *Turjumān*). The word *Jamā'a* in the tradition refers to the solidarity of Sunnī Muslims against unorthodox groups. It is related that the Sunnī Muslims came to be known as *Ahl al-Sunna wa 'l-Jamā'a* when al-Ash'arī (d. 935 A.D.) had abandoned the Mu'tazilites and employed their own method of dialectical reasoning to defeat them. (See al-Taftāzānī (d. 1389 or 1390 A.D.) in his commentary on al-Nasafī's *ᶜAqā'id* (Articles of faith), Cairo, n.d. p. 14.) It seems that the Community of Dan Fodio took the term *Jamā'a* from such references to orthodox Muslims.

172 *Sawq al-umma ilā ittibā' al-Sunna*, ms. Ib. 82/60.

173 ms. Ib. 82/158.

174 See for example his *Najm al-Ikhwān*.

al-Amr bi'l-maᶜrūf wa'l-nahy ᶜan al-munkar.[175] This work is undated but the discussion of *jihād* in it, seems to differ from the earlier references mentioned above. It seems indeed to indicate a turning point in the history of the Community.

The main theme of this work is the obligation of enjoining the good and forbidding the evil. He argues that this is not an obligation on the *ᶜulamā'* alone. Every Muslim should observe this duty, even though he be a sinner, because this duty and individual piety are two distinct injunctions and failure to observe one should not justify neglecting the other.[176] He mentions also that *jihād* is a *farḍ kifāya* (collective duty) according to the Qur'ān, the Sunna and the *ijmāᶜ*. But an ordinary Muslim should not take it upon himself to wage a *jihād*. When 'matters develop to fighting, only an *imām* should be in charge for fear of dissension among the Muslims (p.14)'. He warns the 'ignorant people' against resorting to force to carry out the injunction of *jihād* for 'it only results in failure and drags weak Muslims into perdition unnecessarily (p.17)'. He quotes the movement of Abū Maḥalli as an example of a rash *jihād*,[177] and gives other examples of those who were tempted to lead *jihāds* and were killed together with their followers. Dan Fodio ends this realistic account of the injunction by saying that the Muslims should appoint an *imām* who is 'a male Muslim, wise, equitable, of sound judgement and integrity, brave, versed in religion and not liable to shake under the blows of fate.' These were the traditional qualifications for an *imām* which were re-emphasised by Dan Fodio.[178]

It is significant to note that Dan Fodio in *al-Amr bi'l-maᶜrūf*, implores his contemporary Muslims, *ᶜulamā'* and ordinary men, pious and impious, to carry on the duty of enjoining the good and forbidding the evil. In fact, this had been reiterated in his earlier works. The new idea in this work is that he warns the Muslims, not without reason, against attempting a *jihād*. There must have been at that time some enthusiasts who were impatient to break away from the 'unbelievers' and fight to establish an Islamic state. To his mind such an action would have been rash and premature. There had to be a unified leadership for *jihād*; a competent *imām* had to be appointed first to organise the Muslims and lead them in *jihād* at the right time.

The insistence of Dan Fodio on the installation of an *imām* as a pre-requisite for declaring a *jihād* in Hausaland was of utmost importance. According to the *Sharīᶜa*, taking part in a *jihād* becomes incumbent on a Muslim when he is called upon by his *imām* to fight (*Bayān*, chapter 13). Dan Fodio, as the elected *imām*, therefore had the right to mobilize all the able-bodied Muslim men in Hausaland to fight under him when he declared a *jihād*. Moreover, Hausaland was fragmented into a number of autonomous states, and the first political loyalty of their Muslim populations was to their local rulers. To undertake a *jihād*, they had to have a common feeling and rally under a single leader with a unifying ideology. It is true that the preaching activities of Dan Fodio had been teaching Muslims to believe in the One God, to obey the one law of Islam and to take fellow Muslims as brethren, no matter where they dwelt. Yet only the installation of an *imām* could achieve real unity of all Muslims throughout Hausaland.

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175 ms. Ib. 83/273.

176 ibid, pp. 3–4.

177 Abū Maḥalli, a *ṣūfī* of Tāfilelt, proclaimed himself Mahdī. He marched against Marrakesh during the reign of the Saᶜdian sultan Zaydān (1603–28) after the latter had ceded Larache to the Spanish in 1610. Zaydān used another scholar, Al-Hāhī to defeat him and drive his forces out of Marrakesh (1613). Abū Maḥallī was killed in the struggle and his head fixed on the city walls where it remained for twelve years. (See Julien, *History of North Africa*, p. 238).

178 To emphasize these qualifications and to show nothing less should be accepted by the Muslims was important, because the sultans of Gobir were supposed to be Muslims and Yunfa used to say prayers (*Tazyīn*, p.58). Later, after the *jihād*, al-Kānemi accused Sokoto men of having revoked the homage they had sworn to Yunfa, which is not allowed, even if the ruler is sinful (*Infāq* pp. 121–33).

Al-Amr bi 'l-maʿrūf must be, as shown above, a work written early in the 1790s. At the *ʿId al-Kabīr* prayers at Magami in 1788–9, Dan Fodio said to Bawa, 'My Community and I, are not in need of your wealth but I ask of you five things:

(1) To allow me to call people to God in your country.
(2) Not to stop anybody who intends to respond to my call.
(3) To treat with respect any man with a turban.
(4) To free all [political] prisoners.
(5) Not to burden the subjects with taxes.[179]

These demands clearly had 'political' as well as religious implications and Bawa, having acceded to all his requests, is said to have exclaimed, 'O, people of Gobir, have you seen this Fulani man? There will be no sultanate after me except a local village head.'[180] By this time it was clear to both Bawa and Dan Fodio that the Community had become a religio-political party which was in a position to address the sultan of Gobir in the above terms. However, since Bawa was apprehensive of the potential danger the Community could constitute to his authority and was therefore conciliatory in his attitude to them, open hostility between the two parties was avoided during his reign.

In June 1793, Dan Fodio compiled his *Iḥyā' al-Sunna* which Balogun describes as 'the author's most major work on Islamic theology and law'.[181] It is by far the largest work he ever wrote and follows generally the arrangement of the *Mukhtaṣar* and *Risāla*, covering all aspects of theology and law except *hijra*, *jihād* and government, which are the subjects specifically discussed in the *Bayān*. The fact that these subjects were left out of the *Iḥyā'* in 1793, demonstrates without doubt that Dan Fodio compiled his works to meet the requirements of the Community.

About 1794, Dan Fodio had the mystic experience which he mentions in his *Wird*. He describes in it how the Prophet instructed him to draw the sword of Truth against the unbelievers. But he was no 'fanatic' who would 'drag weak Muslims into perdition unnecessarily'. He was shrewd enough to consider fully the power of his camp before he allowed a clash with the enemy. He knew that time was in his favour. More and more groups were joining the Community[182] while the power of Gobir was on the decline.[183] The first dated work on the *hijra-jihād* theme *Masā'il muhimma*, was written in Dhū 'l-Qaʿda, 1217/March, 1803. Of the Fulfulde writings of Dan Fodio, we have only two dated works dealing with the subject. The first was written in 1212/1797–8 [184] and enjoins the Community to follow the *Sunna* and keep away from the unbelievers. The second, compiled in 1218/1803,[185] instructs the Community to wear turbans and veils as a *Sunna* and encourages them to carry arrows, spears, swords and all sorts of arms.[186] Arms had been being collected since 1797[187] when, according to the *Tazyīn*, the Community had demanded to break with the unbelievers and wage a *jihād*, but Dan Fodio asked them rather to arm themselves. He himself turned to prayer and sought the intercession of his *Shaykh*, ʿAbd al-Qādir al-Jaylānī to let him see Hausaland ruled by Islamic Law.[188]

179 *Tazyīn*, p.30; *Rawḍ*, f.6r.
180 *Rawḍ*, f.7.
181 *Research Bulletin* (CAD), vi (1970), p.13.
182 *Tazyīn* p. 41.
183 vide supra, p. 11.
184 ms CAD/236(2).
185 ms CAD/236(1). I am grateful to Mr. Ibrahim Mukoshy for translating for me the Hausa and Fulani works in the Centre of Arabic Documentation Ibadan.
186 See lines 27–31.
187 Or 1795. Either date may be inferred from a poem of Dan Fodio. See *Tazyīn* pp.51–4.
188 ibid.

The *Masā'il*, compiled just under one year before the *hijra* of February 1804, sets out explicitly in fourteen questions what Dan Fodio wanted to do in Hausaland. Muslims should not be left 'neglected' (*hummal*) without a *bayʿa* sworn to an *imām*.[189] They should migrate from the land of unbelief as an obligation. They should rise against the unbelieving ruler only if they have enough power to do so, otherwise they should not. But if they find that they cannot practise their religion or that their property or their own safety is in danger, they have to migrate to where there is security. Again, if the Muslims see bloodshed or seizure of property in one area, they have to evacuate it for another where nothing like that occurs.[190]

The *Masā'il* was evidently written to guide the Community at a time when tension between them and Gobir authorities was well-nigh at breaking point after Yunfa's increased molestation of the Community. Nevertheless, in spite of the contents of the *Masā'il*, it seems that Dan Fodio was still hopeful of avoiding a clash with Yunfa if only the Community were allowed to practise their religion and propagate it freely.

A year after the compilation of the *Masā'il*, the situation developed into a *hijra* which was a turning point in the history of the Community and consequently in the ideas of the Shehu as expressed in his writings. The *Bayān*, which is the most elaborate single work, so far as I know, on the *hijra-jihād* theme in all Islamic literature, was written in November 1806—three years and eight months after the *Masā'il* had been compiled. This period must have been rich in written literature and propaganda activities in support of the *jihād*. We have records of numerous letters (*wathā'iq*) written to Muslims leaders[191] to back the *jihād*. The Shehu also addressed the Habe kings c.1804 to convince them to recognise the establishment of Islamic rule in Hausaland.[192] A treatise which can be considered as the official declaration of the *jihād* is the Shehu's *Wathīqa*.[193] It is a brief work of only two folios; nevertheless, it summarizes in twenty-seven points, all the fundamental aspects of the *hijra-jihād* theme.

The Shehu enumerates without any discussion, what is obligatory for, and what is forbidden to, the Muslims within this sphere. The brevity of this treatise shows that its circulation was a matter of urgency. A *jihād* had been declared and an *imām* appointed[194] so a message had to be circulated to the largest number of Muslims in Hausaland in the shortest possible time.

In Ramaḍān, 1221/November 1806, the *Bayān wujūb al-hijra ʿalā 'l-ʿibād* was compiled at a time when important centres such as Kano, Daura, Katsina and Zamfara were being integrated into the Community. The *jihād* had spread into the different areas of Hausaland and Alkalawa, the capital of Gobir was hard pressed. It was to give the theories of *hijra* and *jihād* to the semi-independent groups fighting all over Hausaland that Dan Fodio compiled the *Bayān* as a handbook for the warriors and a 'mirror' for the *amīrs*.

The *Masā'il*, written at the end of the first part of the second period, and the *Bayān*, which was compiled in the second part of the same period, represent Dan Fodio's ideas of this era. It was noted above (p. 15) that Dan Fodio's general tone in his writings was mild in the first period, then became less tolerant in the second period and finally became relaxed and even milder in the third period. This development can easily be traced in the two parts of the second period through the *Masā'il* and *Bayān*.

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189 'Second question'.

190 'Third question'.

191 *Infāq*, pp. 95, 104, *et passim*.

192 *Infaq*, p. 83.

193 *Wathīqa min Ibn Fūdī, Amīr al-Mu'minīn ilā jamīʿ ahl al-Sūdān* published by A.D.H. Bivar, *JAH*, ii (1961). pp. 235–243.

194 The Shehu adds the title of *Amīr al-Mu'minīn* after his name in the work.

It was natural that the *hijra-jihād* theme which was discussed in fourteen points in the *Masā'il* should occupy the greater part of the *Bayān*. In the latter part of the second period this theme was no longer theoretical. It had become an urgent need for the scattered armies, only loosely attached to the centre, to have a code in order to guide them. It is further evidence of the historical development of Dan Fodio's ideas that he had not elaborated the minute points of law in his earlier works. Previously, he had been writing of the general needs of the Community and when a clash was anticipated with the Gobir authorities, he cautiously pointed out certain injunctions of the *Sharīʿa* in his *Masā'il*. A reconciliation with Yunfa, then, was not ruled out and the Shehu was shrewd enough not to alienate the Habe authorities unnecessarily. By 1806, the time had come for the Community to study the fifty-seven chapters of the *Bayān* on the *jihād* and related aspects in minute detail.

Another difference between the *Masā'il* and the *Bayān* is that the Shehu does not mention explicitly in the former that the Habe rulers were unbelievers. The *Bayān* accuses them all of unbelief.[195] 'This does not mean', he adds, 'that some of them may not be Muslims in rare cases, [but] the exception carries no weight.'[196] Moreover, the formula that the religious status of a district is that of its ruler is not mentioned in the *Masā'il*, but it became an essential maxim in the *Wathīqa*, the *Bayān* and later writings. This formula was accepted by the Sokoto leaders as the legal basis of decisions as to which people should be fought. Indeed, it was according to this formula or the obligation of paying homage to an *imām* that the Community fought all those who did not agree to join them. On the other hand, even unbelievers were left alone if they concluded an *amān* agreement with the Community. This belief of the *jihād* leaders that 'those who are not for us, are against us' has led some writers to speculate that they were influenced by the extreme views of the Khārijites or the Wahhābīs.[197]

After the *Bayān* and until a little before his death in 1817, Dan Fodio kept on writing on certain aspects of the *hijra-jihād* theme. The division of booty, the administration of the empire, the state treasury, the appointments of *wālīs* and so forth were all to be elaborated. In the third period of the history of the Community Dan Fodio produced what may rightly be called his 'reforming ideas' and these will be discussed below.[198]

(iv) Other matters emphasised in the *Bayān*

As observed above, Dan Fodio's writings were compiled to meet specific circumstances in the life of the Community. In the case of the *Bayān*, this is particularly apparent. The work was written to elucidate the law on the *hijra*, which had been undertaken nearly three years before, and the subsequent *jihād*. The author had been appointed Commander of the Faithful when the *jihād* started and other important appointments were made as the need arose.[199] But before the fall of Alkalawa the hierarchy of administration had not taken its final shape. The *Bayān* was meant to answer all administrative questions and furnish the theoretical basis of his Islamic government. In this respect, all the chapters are relevant. Yet they do not follow the arrangement of any other work on *fiqh*.[200] They are, rather, carefully selected parts from the whole range of Islamic jurisprudence in which certain points are greatly elaborated. Other points are added from outside the field of *fiqh*. The following pages, will discuss the significance of certain chapters or

195 Chapter 1.
196 ibid.
197 *v. supra*, pp. 18-19.
198 *v. infra*, pp. 29-33.
199 For these appointments and the responsibilities they carried, see Last, *Sokoto Caliphate*, pp. 46-57 and 90-102.
200 cf. the *Mukhtaṣar* and *Risāla*, the standard works on the Māliki rite in North and West Africa.

ideas which are either not mentioned in the other works of *fiqh* or only given a passing reference. Dan Fodio must have stressed these ideas because of their historical significance in Hausaland.

The first three chapters of the *Bayān* deal with the *hijra* and most of the Shehu's references are taken from the *Ḥadīth* and commentaries on the Qur'ān. *Hijra* had not been widely treated in *fiqh* works; this is why the Shehu, after saying that the *hijra* is obligatory according to the Book, the Sunna and the *ijmāᶜ*, quotes no authorities, except a single statement from al-Wansharisi [d. Fez. 1507] which says: 'And *ijmāᶜ* upholds the obligation of emigration' [p. 48]. The success of the Shehu's *jihād* largely depended on the *hijra* which started in February 1804 and continued until Birnin Kebbi was captured in Muḥarram 1220/April 1805,[201] the jihādists being on continuous trek without a permanent base to fall back on. The Community had to hunt for provisions not only for the warriors but also for all their dependants who migrated with them as well. The *hijra* was also essential because the Shehu did not have his supporters in a single area which could have served as his stronghold and from where contingents would be despatched. To declare for the Community meant either to migrate or to put up resistance against the Habe authorities in one's home area. Dan Fodio had to write nine folios on the subject to furnish sufficient proof for the obligation of migration from the areas under the Habe regime and joining the *jihād*.

The second point of significance emphasised in the third and fourth chapters of the *Bayān* is an urgent call to the Muslims to sever all relations with the non-Muslims and befriend only their fellow believers. It is our belief that these two chapters constitute the theory behind the *jamāᶜa*. We have mentioned above that the followers of any leader were called his *jamāᶜa*;[202] thus there were the *jamāᶜas* of ᶜAbd al-Salām or ᶜAli Jedo. The followers of Jibrīl b. ᶜUmar before Dan Fodio were also known as his *jamāᶜa*. But the insistence of the Shehu on the *Sunna* practices of Islam inclines us to believe that he favoured the term *jamāᶜa* for his followers because they represented the *ahl al-sunna wa 'l-jamāᶜa* of the early centuries of Islam who had defended orthodox Islam against the Muᶜtazilites.[203] These two chapters, however, urge the Muslims to take Islam as the only basis of friendship and kinship. 'God has said, "You will not find any people who believe in God and the Last Day loving those who oppose God and His Messenger, even though they be their fathers, or their sons or their brethren or their clan." [204]

The Shehu discusses at the end of chapter 4 the status of those Muslims still living under the jurisdiction of unbelieving rulers and who had not had the means to emigrate to join the Community. He mentions that *taqiyya* [dissimulation] can be resorted to when one is in fear of being killed. But he concludes the chapter by saying that *taqiyya* was only practised at the beginning of Islam, but now the only way open for the Muslims was to join the *jamāᶜa*. Having shown the Muslims how imperative it was to obey the injunctions of Islam on *hijra* in the first three chapters, the Shehu discusses the theory behind the *jamāᶜa* and earnestly calls all believers to join it.

As noted above, without a *hijra* and the strong feeling of a religious bond uniting all the believers into a *jamāᶜa*, *jihād* in the context of Hausaland at the beginning of the nineteenth century would not have been feasible.

A third matter of utmost importance for the success of a *jihād* in nineteenth century Hausaland, was the appointment of an *imām*. It is no wonder that the Shehu discusses the obligation of installing an *imām* in chapter six, immediately after the *hijra* and the theory behind the *jamāᶜa*. As

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201 *Infāq*, p. 93.

202 vide supra, p. 1, n. 7.

203 vide supra, p. 21, n. 171.

204 Qur'ān, 58 v. 22. (*Bayān*, chapter 4).

suggested above, a unified leadership for the Community was a pre-requisite of embarking on a *jihād*.[205]

In chapter 10 'On the divisions of [administrative] districts (*wilāya*) run according to the Islamic law,' the Shehu discusses twenty *wilāyas* but gives the greater part of the chapter to *iqtā*ᶜ (land-grants). In the Habe regimes there had been essential connections between government and land-owning. The vassal chiefs held land and enjoyed semi-autonomy in their states as their office was inherited by their heirs. In return, they sent military aid to the kings in times of war and forwarded to him annually parts of the tribute.[206] ᶜAbdullāh b. Fūdī had already written a work wholly on this subject[207] and land-grants must have been a great problem for the *jihād* leaders. According to the law, all lands owned by the Habe sultans and those who fought for them were to be confiscated. New arrangements were to be made for the reallocation of lands and the displaced people were to be rehabilitated. It is to be particularly noted that enfeoffment of land lay at the core of the Habe political organization and structuring of society. The standards were not necessarily Islamic. Under the new dispensation therefore, disposal of the land was a pressing problem which could not be easily solved by the mere direct application of Islamic law. The importance of the traditional Habe system of land holding and the dilemma of applying the Islamic law which confronted the emirates' governments are attested to by the fact that these governments fell back on the Habe system. The courts of the *Alkalai* [pl. of *alkali* = *al-qāḍī*] and the *mazālim* of the emirs in all criminal and civil matters applied the traditional Māliki law in Northern Nigeria at the time of the British administration. But in the field of land tenure, the customary law prevailed.[208]

One further point which draws the attention of the reader in chapter 11, is the space given to warning governors against accepting gifts offered to them. Dan Fodio, in a work written later, says that custom required people to offer money to the Habe rulers in order to win their favour.[209] It was to eradicate such a custom that Dan Fodio wrote nearly half a chapter against offering gifts. Nevertheless, this custom persisted throughout the nineteenth century in Hausaland. In a large number of letters written by different *amīrs* to the Caliph in Sokoto in the last two decades of the nineteenth century, there is always the mention of a gift accompanying the letter.[210] Sometimes such gifts also included authorised tax remittances to Sokoto, but Islamic law is against any type of gift to a superior.

There are four interesting chapters [21-24] on beating drums, wearing silk, embellishing fighting weapons with gold and silver and tying bells and cords to the necks of beasts of burden in a *jihād*. Dan Fodio allows only the beating of drums to frighten the enemy in battle and adorning swords with gold. In his *Kitāb al-farq*, written after the *Bayān*, he describes many of these practices as 'the way of the unbelievers in their government.' They 'wear whatever clothes they wish, whether religiously permitted or not.' They 'ride whatever riding beasts they wish.' They 'live in decorated places' and 'occupy themselves with doing vain things [continuously] by day and by night, without any legal purpose, such as beating drums, and playing lutes and kettle-

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205 For further discussion on this point, *vide supra*, p. 22

206 M.G. Smith, *Government in Zazzau*, 1800-1950, (O.U.P. 1960), p. 39.

207 *Ta'līm al-rāḍī asbāb al-ikhtiṣāṣ bi mawāt al-arāḍī*, copies of this work are kept in the National Archives, Kaduna, Institute de France, Paris (ms 2406, pièce no.62) and the private collection of al-Ḥājj Hārūna, the *amīr* of Gwandu. I have used the copy of al-Ḥājj Hārūna.

208 See N.J. Coulson, *History of Islamic Law* (Edinburgh, 1964), p. 157.

209 *K.al-Farq*, pp. 561-3. *Kitāb al-farq* quotes the *Bayān* so it was written after the latter, but not very long after because the tone and ideas in it seem to place it in the latter half of the second period.

210 A large collection of these letters is kept by Waziri Junaydu, Sokoto.

drums.' Those were the Habe practices which Dan Fodio meant to eradicate by the three chapters in the *Bayān*. By November 1806 the *jihād* armies must have seized many luxury goods and fineries from the Habe aristocracy and those things would normally come into use. Later in the third period, Dan Fodio came to terms to a large extent with their being used, as will be shown in the sequel.

Chapter 25 deals with a point, the relevance of which in the *Bayān* is not easily seen. The title of this chapter is 'On the Law concerning the giving of the standard to the Commander-in-Chief in a *jihād*.' The opening statement of this chapter is that it is an Islamic practice sanctioned by a Prophetic *sunna* to give the standard to the Commander in a *jihād*. The rest of the chapter is a long narration of a story from al-Bukhārī's *Ṣaḥīḥ* in different recensions about how the Prophet gave the standard once to ᶜAlī b. Abī Ṭālib at a time many a warrior was expecting to be commissioned for the task. The main purpose of the chapter seems to reaffirm the prerogative of the head of the Muslim Community to appoint whomsoever he likes to be the Commander.

We know that the Shehu had made the appointments of Commanders and flag bearers almost three years before he completed the *Bayān*. At the time he compiled the *Bayān* there must, therefore, have been some dissatisfaction about the appointments he had made. It is most likely that his brother ᶜAbdullāh was not happy to see Muḥammad Bello overshadow him. Both ᶜAbdullāh and Bello were chief viziers of the Shehu and both led *jihād* campaigns, and at least theoretically the former was supposed to be the senior counsellor. But it can, nevertheless, be inferred from the early history of the *jihād*, as recorded by Bello in his *Infāq*, that he was closer to the Shehu and more influential than his uncle ᶜAbdullāh. For instance Bello represented his father in the very important meeting of eastern Muslim leaders at Birnin Gada.[211] The fact that Bello was eventually given the more important eastern part of the Caliphate with the capital of Sokoto and ᶜAbdullāh was left at Gwandu by 1227/1812, lends support to the notion that Bello was more favoured by the Shehu. It was the succession to the Caliphate which mattered and all events pointed towards Bello succeeding his father. In 1806[212] ᶜAbdullāh even abandoned the *jihād* in discontent and went as far as Kano on his way to perform pilgrimage. The reason he gave for giving up the *jihād* is significant. He said, ' .... there came to me a sudden thought to abandon homelands and relatives and proceed to the land of the Prophet in order to seek [divine] approval, because of what I had seen of the changing times, and my brethren and their inclination towards the world and their squabbling over its possessions (*mulk*) and glory .... I considered flight incumbent upon me, and I left the army ....'[213] However, the relations between ᶜAbdullāh and the Shehu are yet to be studied. It can safely be said here that chapter 25 in the *Bayān* was meant to support the Shehu's tendency towards making his son, Bello, his deputy as the Prophet made ᶜAlī, his nearest kinsman his Commander-in-Chief.

At the end of the *Bayān*, the author includes six chapters on the *sīra* of the Prophet, the four orthodox caliphs and al-Ḥasan. Other *fiqh* works do not deal with *sīra* literature, but Dan Fodio,

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211 *Infāq*, pp. 104–5

212 *Tazyīn*, p. 70.

213 Ibid. The disagreement over the principle of succession to the Caliphate is openly discussed by ᶜAbdullāh in his *Ḍiyāʾ al-sulṭān* (p.9) where he reviews al-Maghīlī's 'Obligations of Princes' written to advise the *amīr* of Kano (ed. T.H. Baldwin, Beirut, 1932). Having quoted al-Maghīlī's statement that a ruler should be careful in his relations with his father and his sons lest his love for them should render him inequitable to others, ᶜAbdullāh's only comment on the statement was, '.... reflect on what he [al-Maghīlī] has said about a ruler's father and sons'. The Shehu replied in his *Najm*, after a long discussion of conflicting views, that it is not forbidden for a ruler to appoint his father or his son in his place (p.29).

as a *ṣūfī*, was always keen to interwine his *ṣūfī* outlook with his *fiqh*. Moreover, though the *Bayān* is primarily a work of *fiqh*, it deals with the wider scope of making the *jihād* a success and the setting up of an ideal Islamic state. It includes an interesting discussion on human nature (chap. 56), the art of traditional military manoeuvres (chap. 28) and other themes such as advice to the warriors, the *amīrs* and the general Muslim Communities. Ideal behaviour could be only found in the *sīra* of the Prophet and the Orthodox Caliphs.[214]

(v) Some comments on the reforming ideas of ᶜUthmān Dan Fodio

A detailed analysis of Dan Fodio's ideas is beyond the scope of this introduction. We shall not, therefore, deal with many of his more remarkable ideas such as the education of women and the unlawfulness of magic. What is intended here is to show that Dan Fodio became conciliatory on some fundamental points of law after the Islamic caliphate was established at Sokoto. The judicial theories expounded in the *Bayān* and other works in the earlier periods were bound to pose problems when put to practical application in the third period. The *Bayān* was compiled at a crucial time in the *jihād* and the strictest interpretation of law was preferred by Dan Fodio, but later he developed a more tolerant outlook depending on less common views of jurisprudence[215]. The severest critic of what we call his reforming ideas was his brother ᶜAbdullāh and through their controversy these ideas found much publicity in Sokoto literature. ᶜAbd al-Qādir b. al-Muṣṭafā (d. 1280/1864) compiled a work in which he collected certain points on which the Shehu and ᶜAbdullāh had disagreed.[216] ᶜAbd al-Qādir, writing after the death of the two *shaykhs*, rebukes the 'ignorant men' who, in his own time, criticised the ideas of ᶜAbdullah. He shows that the two of them drew their points of view from authoritative sources. He remarks that the ideas of Dan Fodio were evidence that he was the Mahdi who is known to disagree with the rest of the scholars in his judgements. ᶜAbd al-Qādir's work suggests that although the controversy outlived the two *shaykhs*, it was Dan Fodio's ideas which were commonly accepted.

The works which the two *shaykhs* compiled in reply to each other's views are also primary documentation of Dan Fodio's reforming ideas.[217] But those ideas outside the themes of the *Bayān* are not included in our discussion.

The first point of his reforming ideas, following the order of the chapters in the *Bayān* [21–23], deals with the use of drums, musical instruments and wearing of silk, gold, and silver.[218] After an extensive survey of the ideas of different scholars, Dan Fodio concludes that they are all forbidden. It has been mentioned above that Dan Fodio forbade these instruments in his earlier works also, on the authority of 'many scholars'. In another work, which was compiled in the second period, he had also forbidden them by quoting more authorities which supported prohibition.[219] But later in 1812, he mentioned in his *Najm al-ikhwān* that musical instruments should not be categorically forbidden because many scholars did not see any objection to them.

These conflicting ideas were voiced by scholars who were all Sunnis. A group of them, among

214 He ends his *K.al-Farq* in the same way. But he adds 'Umar b. ᶜAbd al-'Azīz (d.717 A.D.), the eighth Umayyad Caliph. He omitted the name of ᶜUmar b. 'Abd al-'Azīz in the *Bayān* perhaps because the number of its chapters would thereby be increased to sixty-four.

215 A summary of the contents of the *Bayān* is discussed in section 4 (i).

216 *'Ashr Masā'il fī 'l-khilāf*, ms. Ib. 82/290. The author said that he had collected ten points of disagreement from the *'ajamī* poems of the Shehu.

217 *v. supra*, p. 15 n. 119

218 *Bayān* (translation), pp. 90-3.

219 The title of this work is *Miṣbāḥ ahl al-zamān*, but it has not yet been recovered. It is quoted by Dan Fodio in his *Najm al-ikhwān* (1227/1812) and is extensively quoted by 'Abdullāh for review in his *Ḍiyā' al-sulṭān*.

whom were a majority of the Mālikīs, were against music of any sort.[220] On the other hand, it was allowed by other scholars, particularly *ṣūfīs* such as al-Shaᶜrānī (d.1565) and Ibn al-Mawwāq[221]. Dan Fodio did not wish to set himself against the view of either of the two groups. In fact the flexibility of Dan Fodio in the third period was partly due to the fact that he considered every Sunni scholar as authoritative in his own right. In a way he lacked the power of critical analysis in his approach to problems. In the fundamentals of Islam or the *uṣūl al-dīn*, the path was clear for him since those were contained in the Qur'ān and the *Ḥadīth* and the scholars did not quarrel much over them. But the so-called 'branches' of the religion (*furūᶜ*) entailing such matters as the legality of music and drums were formulated by *ijmāᶜ* and the scholars held divergent opinions on these matters. It was in the *furūᶜ* that Dan Fodio showed independent thinking, though when criticised by ᶜAbdullāh he denied that his ideas emanated from *ijtihād*.[222]

His originality of thinking, which is evident in his choice of opinions of earlier authorities, was not reflected in independent conclusions on points of conflict between those authorities. It is reasonable to conclude that he seems to have refrained from critical analysis to resolve conflicts between earlier scholars whose opinions enjoyed traditional acceptance because, as a strict *muqallid*, he was afraid of appearing to take sides in such controversies. His standpoint, therefore, that all these scholars (including non-Mālikīs) were right, is a mark of his liberality. But some of this liberality may have stemmed from the fact that he had not travelled out to meet scholars of his day in the great centres of Islam and was thus unacquainted with their critical attitudes and open disagreements.

On the other hand, music had been deeply rooted in the general culture of Hausa society and could hardly be abolished. In his *Najm*, Dan Fodio not only allows music, but he also advises the believers not to consider musical instrument *ḥarām* lest the wrath of God should descend upon them.[223]

The wearing of silk, gold and silver which was prohibited in the *Bayān*, also constituted a major problem in the third period, as a result of the luxuries acquired from the Habe regime. The *jihād* warriors seized the property of the Habe chiefs which included clothes and vessels and weapons oranamented with gold and silver. It was ᶜAbdullāh's opinion that such things were never to be used, but Dan Fodio held the view that they could be used temporarily as a sign of thanksgiving for God's favour or in order to humiliate the unbelievers and raise the morale of the Muslims. His authority for this was a story attributed to the second Caliph, ᶜUmar, that he gave the two bracelets of the Persian *Kisrā* to a Companion called Surāqa to whom the Prophet had promised to give Kisrā's bracelets.[224] ᶜAbdullāh did not see the relevance of this story to the permission given to men to adorn themselves with gold and silver. The story of Surāqa according to him, was only evidence of miracles performed by the Prophet. He asked how a thing done as a sign of thanksgiving to God could be temporary; thanksgiving should be permanent. He ended his discussion by flatly rejecting the idea that men should be allowed to wear these ornaments for any length of time and adduced further evidence from the fact that no Mālikī scholar supported the idea.[225]

A similar problem concerning the use of luxuries seems to have arisen from the magnificent

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220 Dan Fodio, *Najm al-ikhwān*, p. 15.
221 Muḥammad Abū Yūsuf b. al-Mawwāq, (d. 897/1492), *GAL S* II, 375.
222 Dan Fodio, *Najm*, p.48.
223 *Najm*, pp. 16–17.
224 *Najm*, pp. 41–46.
225 *Ḍiyā'*, p. 42.

appearance affected by *imāms*, *qāḍīs* and governors in the *jihād*. Dan Fodio wrote in his *Miṣbāḥ*[226] that in the time of the Prophet, people respected men in authority out of their respect for Islam, but later respected them merely for their majestic appearance. ᶜAbdullāh argues in his *Ḍiyā' al-sulṭān* that the need for such magnificance was lacking in Hausaland. 'Our Community today, he says, 'thanks to God, needs only piety and following of the Sunna on the part of men in authority.' The luxurious appearance of rulers in his time seemed to ᶜAbdullāh only of worldly interest and not in any way dictated by a religious purpose.[227] Here ᶜAbdullāh is expressing puritanical ideas and the contrary can hardly be called reforming. But Dan Fodio was more realistic and accommodating. All the property and possessions seized from the sultans had to be used in some way. In defence of wearing silk in a *jihād*, Dan Fodio advances a modernizing theory which does not contradict the concept of reform. He says, quoting Ibn al-Mawwāq, that not everything done by the *ᶜajam*[228] should necessarily be rejected just because they practise it. The law does not forbid imitating others in permissable matters. After all, the Prophet dug a defensive trench around Medina imitating a Persian practice.[229]

A second point in which Dan Fodio exercised his judgement in a realistic way, was in dealing with the possessions of Muslims which the unbelievers had taken (*Bayān*, chapter 37). He explained the law concerning this point in the *Bayān*, but difficulty arose later in its application. The greatest complication was apparently due to an *amān* (guarantee of protection) concluded between the Tuareg of Gobir and the Community after the *jihād* had started. According to the law, any Tuareg of the area could claim his property if he found it with another. But the *jihād* army seized Tuareg property together with Habe belongings when Alkalawa was occupied.[230] Long after the fall of Alkalawa, much property was being looted until the administration from Sokoto brought things under control. The situation was so confused that any practical investigation into the ownership of contested property would not be realistic. Dan Fodio's legal decision (*fatwā*) to the *qāḍīs* was to take the fall of Alkalawa as the dividing line before which no claim could be heard. This is Dan Fodio's own view of the matter.[231] ᶜAbdullāh's view, indicated previously,[232] shows his disgust at fixing the fall of Alkalawa as a dividing line in legal decisions. The *qāḍīs* according to information received from them by ᶜAbdullāh, had evidently taken the date of the fall of Alkalawa to determine the validity of *all* cases of disputed ownership whether concerning Tuareg, for whom the *fatwā* was made, or others.

The greatest contribution of Dan Fodio's reforming ideas, apart from his views on *sunna* and *bidᶜa*, was in the field of *madhāhib* (schools of law). This does not constitute a chapter in the *Bayān* for all the judicial ideas in it are based on the Mālikī rite which Dan Fodio calls 'our *madhhab*'.[233] But at the end of his career, Dan Fodio's ideas transcended to a great extent, the schools of law. He declares in his *Hidāya* that 'neither God in His Book nor the Prophet in his *sunna* made it obligatory that one particular *madhhab* should be followed, nor did we hear any of the early scholars enjoin a person to follow one rite. If they had done that, they would have commit-

226 This is quoted by ᶜAbdullāh in *Ḍiyā'* p. 46.

227 Ibid.

228 The term *ᶜajam* was originally used to mean non-Arabs, generally Persians. But Ibn al-Mawwāq, the *qāḍī* of Granada, must have meant Europeans by this term.

229 *Najm al-ikhwān*, p.40.

230 *Najm*, pp. 52-67.

231 Ibid.

232 ᶜAbdullāh's opinion has been taken from his *Ḍiyā' al-sulṭān* written earlier in the same year (1812). Dan Fodio's *Najm* was compiled in November, 1812.

233 *Bayān*, chapter 23.

ted a sin by not allowing people to act in accordance with *ḥadīths* which that particular rite did not give weight to.'[234] This idea of Dan Fodio is of far reaching significance in Islamic jurisprudence. Since the middle of the fourth century A.H. (tenth century A.D.) Muslim jurists had abandoned independent thinking and restricted themselves to the findings of the leaders of the *madhāhib*. In other words the 'gate' of *ijtihād* gradually came to be considered closed after the death of Aḥmad b. Ḥanbal (241/855). A Ḥanbalī jurist who died in 340/952 was of the opinion that any *ḥadīth* or verse of the Qur'ān which had not been considered by the early Ḥanbalis must be either *mu'awwal* (differently interpreted) or abrogated.[235] Following the closing of the 'gate' of *ijtihād* there set in the period of *taqlīd*, unquestioning acceptance of the views of established schools. This blind adherence of every individual Muslim to one school only, continued until the end of the thirteenth century A.H.[236] At times there were certain scholars who tried to break away from thinking in terms of only one school, such as Ibn Taymiyya (d. 1338), a Ḥanbalī who nevertheless drew ideas and legal decisions from all the other schools.[237]

A Muslim jurist may in fact give a legal decision according to another school, but only in cases of necessity. For example, the Shāfiᶜī school rules that a mother has first right to the custody of the child until the age of seven years while the Mālikis hold that guardianship of a boy continues with the mother till the age of puberty.[238] A jurist in the Mālikī rite can give a decision, if it is imperative, that a husband take the boy at the age of seven, in accordance with the rule of the Shāfiᶜī school. This would be a decision according to necessity in keeping with the maxim *al-ḍarūrāt tubīḥ al-maḥẓūrāt* (necessity allows forbidden things). But Dan Fodio wonders why an act allowed by one school should be regarded as forbidden by another.[239] He held the view that the *Sharīᶜa* was explained in 313 ways and only four were fully expounded and came to be recognised as the four rites. He acknowledges that it is advisable to follow the four rites only because all the answers are found in them. Nevertheless, all the other ways are equally right and authoritative within their limits.[240] Any person following a particular rite can freely adopt any idea from another[241]. He considers that differences among scholars are a blessing to Muslims because they can choose what appeals to them.[242] He hesitates to stop anybody from doing anything which is not explicitly forbidden in the Qur'ān or *Ḥadīth*. As to the *ijmāᶜ* even if only one scholar contradicts what is generally agreed upon, Dan Fodio has no objection to listening to him. This was at the root of all his disagreements with ᶜAbdullāh who accepted only the ideas supported by the majority of the Mālikis. Despite his liberality, the Shehu did not reject or attack the Mālikī school to which he belonged and which was the prevalent school in the Western Sūdān.

To conclude our examination of Dan Fodio's reforming ideas, we shall look a little more closely at his attitude towards *ijtihād* and *taqlīd*. As noted earlier, he categorically denied that he practised *ijtihād*. He is not known even to have employed analogy (*qiyās*) in giving his own inde-

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234 *Hidāyat al-ṭullāb* (Gaskiya Corporation, Zaria, 1961), p.2.

235 ᶜAbd al-Wahhāb Khallāf, *ᶜIlm uṣūl al-fiqh* (7th ed., Cairo, 1956), pp. 339–340. The name of this Ḥanbalī scholar was Abū 'l-Ḥasan al-Karkhī.

236 ibid, p. 344. It was in 1286/1859–70. that the Ottoman government summoned an assembly of scholars and commissioned them to draw up a code of civil law according to the *Sharīᶜa* but not necessarily drawn from any school of law. Such a code was compiled and decreed in 1292/1875–6.

237 Muḥammad b. Yūsuf Mūsā, *Ibn Taymiyya* (Cairo, 1962), p. 224 *et passim*.

238 See Reuben Levy, *The Social structure of Islam* (Cambridge, 1957) pp. 140–1.

239 *Hidāyat al-ṭullāb*, p.4.

240 *Najm*, p.8.

241 *Naṣīhat ahl al-zamān* (April, 1811), chapter II.

242 This idea is taken from the *ḥadīth*: *ikhtilāf ummatī raḥma*, 'differences of opinion within my Community are a blessing.'

pendent decisions which were invariably based on rulings of earlier jurists or pronouncements of scholars. The parallel he drew between the story of Surāqa and the temporary wearing of clothes ornamented with gold and silver, resembles *qiyās*. But he rightly argued that it was only *ilḥāq al-naẓīr bi 'l-naẓīr* (comparison of like with like), a principle which is more flexible to implement as it only requires a mere comparison, whereas analogy relies on finding a causal link *(ᶜilla)* between an already established ruling and a new case.

Dan Fodio repeatedly emphasised that he was only a *muqallid*, which he truly was. But in his concept of *taqlīd* lies an unmistakable tendency towards opening the 'gate' of *ijtihād*. He considers as equally sound and authoritative all Sunni schools of law and all the different views of scholars within these schools, indeed all views expressed by any Sunni scholar in the history of Islam. His reverence for the Sunni scholars made him accommodate all those views and give the freedom of choice to the individual, provided one is capable of understanding the relevant text.

This is a significant step towards the liberalisation of Islamic law. In giving a *fatwā* on matters of public concern, however, Dan Fodio was still of the opinion that in general one should rule only according to the dominant view of a school. But in individual practices of religion it was not prohibited for a man to choose whatever appealed to him from all the different ideas of the Sunnī schools. This view, in a way, renders *ijmāᶜ* ineffective. If every scholar in his own right can be regarded as authoritative and his views are sufficiently sound to be adopted, the consensus of opinion of a majority of scholars loses its force. This freedom of choice advocated by Dan Fodio went a long way towards opening the 'gate' of *ijtihād*.

We have said that Ibn Taymiyya also investigated all the schools in order to form his views. But whereas the latter critically analysed the views of the earlier scholars and the *Ḥadīth* as well, Dan Fodio accepted them all without scrutiny. He attached little significance to the *madhāhib* of the scholars, nor to the age they lived in. Al-Ghazālī [d. 1111], al-Suyūṭī [d.1505], al-Shaᶜrānī [d.1565] and al-Nafrāwī [d.1792] were all equally acceptable to him.

4. *Dan Fodio's Methodology and use of sources*

(i) Methodology

The general methodology followed by Dan Fodio in his writings is consistent and systematic and quite distinct from that of ᶜAbdullāh or Bello. A study of his methodology has not, by and large, been helpful in fixing the chronology of his writings, since there is hardly any difference in method or style in all his works other than those mentioned earlier.[243] On the other hand, the attribution of a work to Dan Fodio can be ascertained with a considerable degree of certainty by the general characteristics of his writing. His *Bayān* is a typical example of these characteristics.

Dan Fodio uses special formulae at the beginning and end of his works and these were the same prayers he recited at the beginning of his preaching classes.[244] Bello adds that his father used the same formulae in his correspondence,[245] though no example has so far been recovered. The opening and closing expressions of the *Bayān* are the most common patterns in his works; though sometimes they may be slightly modified, generally by putting the first half of the closing expression at the opening of the work and leaving the other half at the end of it, as we find in his *Uṣūl al-dīn*.[246] But the formula always includes prayers for the Prophet, his family, Companions, Followers, the practising scholars (*al-ᶜulamā' al-ᶜāmilūn*) and the four 'original' *imāms* (*al-a'imma*

243 *v. supra*, p. 15.
244 Bello noticed this in his *Turjumān*, f. 5. r.
245 Ibid.
246 ms. Ib. 82/92.

al-mujtahidūn) and 'those who follow their pattern to the Day of Requital.' After such an opening, he says 'Now to continue, this is the book of .... (*ammā ba*ᶜ*d, fa hādhā kitāb* ....)', and then proceeds to mention his object in writing the work. He goes on to inform the reader of the contents of the work by citing the exact words of the chapter headings as preface, sometimes with a formal introduction (*muqaddima*) and a conclusion (*khātima*). Every chapter is headed by his favourite formula 'I say, and success is from God.'[247]

The other Sokoto writers sometimes try to follow the same pattern but they are far less consistent. For example, ᶜAbdullāh in his *Maṣāliḥ al-insān*[248] omits to mention his chapter headings in the preface, but yet he uses the word *faṣl* to introduce the first ten divisions of his work. The next division bears the heading *bāb* but without a number, then the term *faṣl* reappears several times but numbering is finally dropped. Such incongruity never occurs in any of Dan Fodio's works. Muḥammad Bello is similarly inconsistent. In his *Infāq* for instance, though he presents no scheme of the work in the introduction, he does make a somewhat arbitrary use of the term *faṣl* here and there throughout the text. Some sub-sections are headed *dhikr* [mention] or the names of campaigns are used by themselves as headings. Dan Fodio would adhere consistently to one term and would give sections consecutive numbers.

Another characteristic of Dan Fodio's compilations is the abundance of verbatim quotations from earlier scholars. He quotes over sixty-five different works in his *Iḥyā'*, fifty-six in the *Bayān* and over fifty-nine in *Najm*. The degree of precision in quoting the exact words is demonstrated in the footnotes to the present Arabic text of the *Bayān*. He calls the reader's attention to the end of every quotation by the verb *intahā* [concluded]. In the works of the other Sokoto writers, it is not always easy to detect when a quotation ends and their own argument is resumed. Unlike Dan Fodio, they sometimes paraphrase what they cite from the other writers. An example of this is to be found in Bello's *Kitāb al-taḥrīr* where he paraphrases a statement from Zarrūq's *Qawā*ᶜ*id* and then says 'concluded with some additions '(*intahā ma*ᶜ *ba*ᶜ*ḍ al-ziyāda*)[249].

The proportion of Dan Fodio's own words in his books, compared with the amount of quotation, seems to be very small. Furthermore, the words he uses to introduce the quotations are taken from the texts he cites. This is particularly true in his works on *fiqh* such as the *Bayān*, chapters 1–53. In the rest of the *Bayān* where he tends to narrate, or in certain other works in which he discusses points in dispute with ᶜAbdullāh, or the 'deviant groups' on *takfīr*, his rigid style gives way to more smooth and flowing phraseology. Even so, the phrases he uses strongly recall similar phrases to be found in the references he has read. But his compilations are so tightly structured with maximum economy of words that no word could be inserted or omitted without seriously altering the meaning of the text. This peculiarity of his scholarship is a distinguishing feature of his works in all the three periods. Nevertheless, as we have argued, he was not merely a compiler; on some points he exercised independent judgement.

The way Dan Fodio arrives at his conclusions is also interesting. When a point is in dispute, he reviews the opinions advanced on the two sides of the issue. Sometimes he uses the traditional method of argumentation, e.g. 'if you were to ask.......I would say', or 'the answer is given by......' At other times, he gives his point of view by adding after the different arguments 'and I say......' But often he leaves the reader, particularly in the third period, to decide by himself which way to take. He might intentionally quote more scholars who were in favour of a certain

247 In the 63 chapters of the *Bayān*, the formula is used throughout except in chapters 33, 50 and 57 where it is omitted in all the mss., except ms C which has it written in the margins.

248 ms. Ib., 82/264.

249 Bello, *Kitāb al-taḥrīr*, Gaskia Corporation, Zaria, 1962, p 48.

point of view, suggesting his own inclination towards it. In his *Najm* (p. 16), for example, he points out that he quoted in that book more scholars in favour of allowing singing and the use of the drum while in his *Miṣbāḥ* he had quoted more of those who forbade it. Although he makes this remark to prove that he was not contradicting himself, yet it seems that he was taking a conciliatory view on these issues by the time he wrote his *Najm*.[250]

In conclusion, it is clear that Dan Fodio's works were written with the intention of teaching his Community. As a talented teacher, he puts his points clearly and draws his conclusion from evidence he has fully discussed and often summarises his discussion at the end of the chapter or the book.

(ii) Use of sources

Dan Fodio often cites his references by mentioning either the name of the writer or the title of his work, adopting whichever is shorter. For example, he writes *al-Mukhtaṣar* rather than the name of its author, Abū 'l-Ḍiyā' Khalīl b. Isḥāq al-Jundī but prefers al-Qasṭallānī to the title of his work *Irshād al-sārī li sharḥ Saḥīḥ al-Bukhārī*. Nevertheless, he sometimes gives a shorter title for a work or calls the author by a short name or title by which he was famous, such as al-Nafrāwī or Ibn al-Ḥājj. But he seldom leaves the reader at a loss for identifying his authorities. On a few occasions in the *Bayān*, he does not specify his sources. He quotes 'the commentators' (*al-mufassirūn*) without mentioning any name [pp. 48,52 *et passim*]. In fact all such quotations are from al-Bayḍāwī, *Anwār al-tanzīl wa asrār al-ta'wīl* which was accesible to Dan Fodio and which he quotes specifically in his *Najm* [pp. 56, 57]. Another work extensively cited by Dan Fodio in the *Bayān* without mentioning the name of its author, is a work not readily identifiable, the *Ḍiyā' al-khulafā'*. Al Suyūṭī compiled a work entitled *Ta'rīkh al-khulafā'* which Dan Fodio quotes in his *Naṣīḥat ahl al-zamān*, but it does not seem to be the work referred to in the *Bayān*. Quotations from *Ḍiyā' al-khulafā'* bear a marked resemblance to passages in al-Ṭurṭūshī's *Sirāj al-mulūk* which was evidently available to Dan Fodio, as he quotes it in his *Iḥyā'* under the title *Sirāj al-mulūk wa 'l-khulafā'*.[251] It is possible that *Ḍiyā' al-khulafā'* was an abridgement of this work perhaps by ᶜAbdullah b. Fūdī who was fond of *Ḍiyā'* titles[252] and wrote on *siyāsa*.

However, Dan Fodio draws heavily on *Sirāj al-mulūk* in the latter part of the *Bayān* without acknowledgement to the work itself and only rare acknowledgement to *Ḍiyā' al-khulafā'*. Chapters 51 and 57 of the *Bayān* are mainly summarised from the above work. Dan Fodio may not have considered it imperative in these chapters, which deal mostly with social behaviour rather than legal rulings, to mention his sources.

Dan Fodio had no objection to quoting statements of scholars reported in other works without having recourse to the original source. For instance, the statements of Ibn Khaldūn in the *Bayān* [chapter 1] were reported by Aḥmad Bābā in his *Kashf*. It seems that Ibn Khaldūn's work was not available to Dan Fodio, since the words which Aḥmad Bābā used to introduce quotations from him in his *Kashf* also appear word for word in Dan Fodio's quotations in the *Bayān*. The latter quotes them in the same way in his *Tanbīh al-ikhwān* [chapter III]. Bello, too, quotes Ibn Khaldūn in *Infāq* [p. 3] with the same introductory words of Aḥmad Bābā. In matters of history as with matters of social behaviour, Dan Fodio was not particular about stating his authorities.

But it is a serious matter when Dan Fodio, in the *Bayān*, [chapter 1], quotes Aḥmad Bābā as an authority for determining which populations of Hausaland were 'unbelieving' and could legitimately be fought. It strikes the reader as strange that Aḥmad Bābā, who spent his life in

250 *v. supra*, p. 29.

251 Edition of Balogun, p. 374.

252 There are sixteen known titles of 'Abdullāh's works, beginning with the word *Ḍiyā'*.

Timbuktu and Morocco should be quoted by Dan Fodio to determine which peoples of Hausaland were unbelievers; the more so when it is realised that Aḥmad Bābā wrote his *Kashf* in 1024/1615.[253] Dan Fodio was evidently looking for the authority of a scholar to justify his decision. But the two hundred years which had intervened between the writing of the *Kashf* and Dan Fodio's *jihād* had tended to reverse what Aḥmad Bābā said about the state of Islam in Hausaland. Dan Fodio's own preaching activities alone, so we are told, had a great influence on the religious life of these peoples.

The Shehu wrote his *Bayān* at a period when he was most unyielding. In the third period, he wrote his *Tanbīh al-ikhwān ᶜalā aḥwāl arḍ al-Sūdān* [1226/1811] where he quotes the same statements of Aḥmad Bābā but no longer ignores the fact that they were made two hundred years earlier. He says that Aḥmad Bābā's account was true in his own days 'but it might not necessarily be true at all other times, since every scholar relates what he sees in his own days.'[254] While discussing the changes that had taken place in the religion of the first class of lands (where the sultans and the masses are unbelievers),[255] he says, 'Islam has now spread among its masses and some of their sultans have embraced Islam.'[256] This statement implies that there were other sultans who were still unbelievers in 1811.

In some fields it seems that few books were available in Hausaland. For example, the Shehu's authorities on the art of war do not go beyond the Qur'ān, the *Ḥadīth*, and *Sirāj al-mulūk*. In the whole of Sokoto literature, no reference is made to works on Muslim military techniques. There was no lack of such works. Scanlon for example, lists over fifty titles in Arabic on the art of war.[257] Many authors known to Dan Fodio, had also written on the subject, such as the celebrated polymath al-Suyūṭī and ᶜIzz al-Dīn b. Jamāᶜa.

The Shehu's methodology and use of sources are peculiar to him. Yet it cannot be said that he 'innovated' a style of his own. There is no doubt that he imitated the general traditional characteristics of Muslim scholarship in almost every aspect of his style, but he held fast to the same combination of characteristics throughout his life and thus produced what can be rightly called the Shehu's style of writing. This enables us, therefore, to attribute works to him with some degree of confidence based on the methodology and use of sources.

5. *The manuscripts and method of collation*

The attribution of the *Bayān* to Shehu ᶜUthmān dan Fodio is established beyond doubt. He himself quoted the full title of it in *Kitāb al-farq*, Bello mentioned it in *Infāq* and ᶜAbd al-Qādir b. Gidādo (d. 1276/1859) in his *Anīs al-mufīd*.[258]

The *Bayān* has recently attracted the attention of scholars in the field of West African history, although it has never been published.[259] The Shehu's intention was to give the *Bayān* wide publi-

253 J. O. Hunwick, 'A new source for the biography of Aḥmad Bābā al-Tinbuktī', (1556–1627), *Bull. SOAS*, xxvii, (1964) p.592.

254 *Tanbīh*, chap.III.

255 See translation, pp. 49-50.

256 Ibid.

257 See *A Muslim manual of war, being Tafrīj al-kurūb fī tadbīr al-ḥurūb*, by 'Umar b. Ibrāhīm al-Awsī al-Anṣārī, edited and translated by George T. Scanlon, Cairo, 1961, pp. 7–19.

258 Both lists of Dan Fodio's works in *Infāq* and *Anīs al-mufīd*, mention *Kitāb al-jihād*. As the *Bayān* is the most elaborate work Dan Fodio ever wrote on *jihād*, it is most probable that it is the work referred to by the above title in *Infāq* and *Anīs al-mufīd*.

259 M.G. Smith and M. Muntaka Kumasi apparently translated the *Bayān* into English in 1959 and entitled the work, 'An account of the Obligation of withdrawal, being a translation of the *Bayān wujūb al-hijra 'ala 'l-'ibād* of Shehu Usumanu dan Fodio'. See M.G. Smith, 'The *jihād* of Shehu dan Fodio: some problems', in I.M. Lewis (ed.), *Islam in Tropical Africa*, p.408. There is no record of this translation ever having been published.

city among the warriors, *qāḍīs* and administrators; indeed among the whole Community, because it was meant to answer many urgent questions of the hour. Copies of the *Bayān* do still circulate in the Northern States of Nigeria; I saw a malam in Kano making a new copy in 1963. I have not, however, been successful in locating a holograph or even a contemporary copy, since none of the manuscripts which I have consulted contains any information relating to primary copies. The traditional Islamic practice of mentioning the ancestry of a manuscript has been neglected in the Sokoto tradition.

I have used four manuscripts, A, B, C, and D in establishing the Arabic text of the *Bayān*. Manuscript A now in the author's collection, was obtained by Mr. I. Mukoshy from Gwandu. It consists of 117 folios of 14 to 16 lines per page, 16½ x 23 cm. It is a clear, legible, fairly accurate and correctly vocalised text. Most of this manuscript is written in brownish black ink which appears to be locally made because there are clots of ink on some letters and it does not seem to flow smoothly from the pen. Rubrications of chapter headings and the beginnings of quotations are consistently made. The edges of most of the pages are frayed and it was probably written early in this century.

This text seems to have been frequently used in producing other copies or in teaching. Several folios have been replaced at a later date. Folios 101–117 are of only 12 to 14 lines per page, written in a different bold hand and in more blackish ink of a better type. Some folios in this section are water-marked with three crescents. The second copyist maintained the high standard of the text in accurate vocalisation and regular rubrics. At a more recent date folios 62 and 63 were renewed on thick paper and in a third even bolder but equally reliable hand. Prior to the renewal of these two folios, some liquid had stained the top part of the whole manuscript and come down to the right and left sides of it slightly affecting the writing. There are no details of the copyists.

Manuscript B is from the collection of the Emir of Kano where it is catalogued under *fiqh*, 61. It consists of 54 folios of 24 to 27 lines per page. The handwriting is clear, elegant and very small. It is only sporadically and often wrongly vowelled. There are some marginal notes in Fulfulde explaining certain words,[260] and sometimes the explanation is made in Arabic. The copyist gives his name as Ḥasan b. al-Ḥājj Yūnus in the colophon. He invokes God's forgiveness for himself, his brother, Muḥammad Kuyuragh (Koiranga?) and Shaykh Yamūsā.

Manuscript C is preserved in the collection belonging to the Kano Native Authority and housed in the Shahuci Judicial School, Kano. It contains 74 folios of 18 to 21 lines per page. The text is vocalised with scarcely any commentary. The handwriting is small and not always clear. There are frequent mistakes and mis-spellings and no particulars of the copyist are mentioned.

Manuscript D was photocopied by the University Library, Ibadan (82/172) from an original kept in the Town Council, Sokoto. It consists of 61 folios, 20 lines per page 18 x 23 cm. It is a fairly recent copy probably less than twenty years old. There are rubrics for chapter headings and beginnings of quotations. The handwriting is legible and clear but characterised by numerous errors. There is no date of copying or name of copyist.

I have designated the four manuscripts A, B, C, and D according to their accuracy and reliability. D is the least accurate of all; C has more mistakes than B; while A is by far superior to the rest. A good check on the readings of these manuscripts was made possible by the passages which Dan Fodio quoted from the earlier scholars. In a number of instances, the correct rendering of the text was ascertained by the words Dan Fodio quoted from the earlier writers in manuscript A only.

260 In folio 51r. for example, against the word *malḥafatihi* (his cover), there are written in Arabic script the words 'waḥrane wa'ko'. 'Māko' means 'his' in Fulfulde and 'warrane, pl. gānāje' means 'a cloth, garment, especially the cloth a man wears at night'. See Taylor, *A Fulani-English Dictionary* O.U.P. 1932.

The text of the *Bayān* has been collated from the four manuscripts mentioned above. I have made every effort to obtain texts of the works quoted and to check each quotation with the original work whenever Dan Fodio quotes from earlier authors. The guide lines, on the basis of which my collation was made, were two works written by al-Munajjid and Hārūn who formulated a theory for manuscript collation based on the western system and traditional Arabic scholarship.[261]

Al-Munajjid [pp. 10–11] argues that, as the purpose of collation is to establish the correct text of the author, there should be no commentary or unnecessary additions of any kind in footnotes which are apt to divert the attention of the reader from following the text. In my collation, I departed from the above rule in two ways. First, I added footnotes denoting nearly all manuscript variations which are in many cases unmistakable mis-spellings that do not make any sense. I thought that is academically honest on the one hand and useful on the other for future studies on the standard of Arabic scholarship or manuscript production in the Northern States of Nigeria. Secondly, I made certain observations on the language and grammar of the text as well as explaining some technical terms. As to the language, for instance, the four manuscripts agree in folios 87 (A) and 95 (A) on the word *idhāya* meaning 'harm'. The nouns from the verb root *adhiya* are *adhan* and *adhāt* according to classical lexicons. Other nouns of this verb are *adhiyya*, *adhiyy* and *idhā'*.[262] But *idhāya* is dialectal[263] and there is enough proof that it was the author's error. He used it in his *Masā'il* (p. 4) and *Naṣīḥat ahl al-zamān* (p.7). Showing these observations in footnotes, I took the liberty of correcting this word in the text. My authority for changing this word was the work from which Dan Fodio had copied. Another example from folio 61(B) is *qanāṭir* as plural for *qanṭara* meaning a bridge. In spite of the fact that the four manuscripts agreed on *qanāṭir*, I changed it into *qanāṭir* because the work from which Dan Fodio had quoted has the correct form. Wherever there has been no such authority for correcting a word, I left the agreed reading in the text. In grammar, for example, a masculine pronoun refers back to a feminine noun (folio 3A), in the phrase *al-ḥarb wa ḥiyalihi* which should be *wa ḥiyalihā*. In this case, I left in the text Dan Fodio's own phrase because there was no authority for correcting it.

The meanings of some words as well as the elucidation of some technical terms had to be explained. Otherwise, I have not intended to divert the attention of the reader. Even in showing the manuscript variations, I have used an economy of words. Only the points on which one manuscript or more differed, are shown in footnotes in Arabic; for instance; B, or B and C: so and so. This means that other copies agree with the words in the text. Whenever there is an omission or addition, I showed that such manuscripts omitted or added the particular words.

The text of the *Bayān* is clear and comprehensible throughout, except in one case. In folio 53(B), the four manuscripts and the work quoted (al-Shabrakhītī) agree on inserting the name of 'Ibn ᶜArafa' in the middle of a sentence. I have noted this irregularity in footnotes both in the text and the translation. A leading professor of the Mālikī rite at al-Azhar, did not find it easy to give an explanation.[264]

The folio numbers appearing in the margins of the text and the translation with a (//) inside the line, refer to the folio-numbering of manuscript A to make it easy to correlate the translation with the Arabic text. The division of the text into paragraphs is entirely mine as well as all the punctuation and quotation marks. The orthography has also been made consistent with modern Arabic practice. But I have never interfered to change any other aspect of the *Bayān*.

261 Ṣalāḥ al-Dīn al-Munajjid, *Qawā'id taḥqīq al-makhṭūṭāt*, 3rd ed., Cairo, n.d.; 'Abd al-Salām Muḥammad Hārūn, *Taḥqīq al-nuṣūṣ wa nashruhā*, Cairo, 1374/1954.

262 See *al-Munjid*; *Lisān al-'Arab*.

263 *Idhāya* has lately crept into written Arabic and is recognised by modern dictionaries such as that of Hans Wehr.

264 Shaykh Ṭāhā al-Sākit under whom I studied Mālikī Law, July-Dec. 1964.

6. System of Translation

When the Arabic text of the *Bayān* was collated, paragraphed and the difficult passages elucidated, the translation was attempted with a view to rendering a good idiomatic translation representing the full significance of the original.

The translation of verses of the Qur'an in the *Bayān*, was generally based on the translations mentioned in the bibliography. Nevertheless, certain exegeses were drawn upon when effecting slight modifications of these translations.

The numerous parentheses in the *Mukhtaṣar* passages are due to the pithy style of Khalīl b. Isḥāq. The English of such passages may still seem rather strained, but without the frequent insertion of phrases to explain the preceding words, the *Mukhtaṣar* would be virtually incomprehensible.

As already mentioned, Dan Fodio used to take words to introduce his subjects from the actual phrases of the scholar he was going to quote. I have intentionally retained in the translation this feature of his style, no matter how unattractive it appears in English. To do otherwise might have resulted in renderings which do not perhaps represent the full significance of the original.

The pious formulae which normally accompany the mention of God, the Prophet and his Companions in Arabic, would be very monotonous when repeated often in English. I have, therefore, eliminated all such formulae in the translation. Similarly I have abbreviated titles of certain works and indicated these abbreviations in the bibliography. Place names are given in standard transliteration except where a generally accepted English form exists such as Mecca (for Makka) and Medina (for al-Madina).

The paragraphs in the translation do not necessarily correspond to those in the Arabic text. For in the translation I have attempted to conform to the English system of paragraphing whereas in the Arabic text the paragraphs are often longer. At the end of quotations, Dan Fodio often writes the word *intahā* [concluded]. This word has been retained in the Arabic text, but since the purpose of the word *intahā* is only to show the quotation has ended, I have omitted the word 'concluded' in the translation and merely inserted quotation marks.

I endeavoured, as far as possible, not to burden the reader with a paraphrase in the translation and a literal meaning in footnotes, though occasionally this has been unavoidable. I would also have wished not to burden the reader with so many Arabic terms in the translation. But where it has proved difficult to find a precise English equivalent, the Arabic term has been retained to avoid repeating lengthy circumlocutions. In cases where I have had to add words of my own to make smooth reading (or, in the case of the *Mukhtaṣar* to amplify the text from the commentaries to make it even basically comprehensible), I have enclosed these additions within square brackets [ ]. If, in the end, the English reader finds Dan Fodio's work difficult reading, he may take comfort in the fact that he shares this problem with the Arabic reader who tackles the original. Those who have the patience to wrestle with its intricacies will be amply rewarded by the insight the work affords into the mind of Dan Fodio and the vision he had of an Islamic state in Hausaland.

Dan Fodio's reward is that which any scholar would most desire—that his work be read long after his death and provide a source of stimulation to scholars of another generation.

SHORT TITLES OF BOOKS CITED IN THE TRANSLATION

(For full details, see Bibliography)

Short title	Work
ᶜAbd al-Bāqī	Muḥammad b. ᶜAbd al-Bāqī al-Zurqānī's Commentary on the *Mukhtaṣar*.
ᶜAbd al-Ra'ūf's *Kawākib*	al-Minnāwī, *al-Kawākib al-durriyya.*
Aḥmad b. Saᶜīd in his *Mukhtaṣar*	An abridgement of al-Ubbī's *Ikmāl al-ikmāl* (a commentary on the *Ṣaḥīḥ* of Muslim). Untraceable; not known to either Brockelmann or Sezgin.
Aḥmad's *Musnad*	Ibn Ḥanbal, *al-Musnad.*
Aḥmad al-Zarrūq	*Qawāᶜid al-taṣawwuf.*
Ḍiyā' al-khulafā'	Work of unknown authorship mostly derived from al-Ṭurṭūshī, *Sirāj al-mulūk.*
Fawākih	al-Nafrāwī, *al-Fawākih al-dawānī*, a commentary on the *Risāla* of al-Qayrawānī.
Ibn ᶜAbd al-Salām	al-Tasūlī, *Kitāb al-bahja*, a commentary on the *Tuḥfa* of Ibn ᶜĀṣim.
Ibn ᶜArafa	Ibn ᶜArafa, *Kitāb al-ḥudūd.*
Iḍā'at al-dujunna	al-Maqqarī, *Iḍā'at al-dujunna fī ᶜaqā'id ahl al-Sunna.*
Iḥyā'	al-Ghazālī, *Iḥyā' ᶜulūm al-dīn.*
Irshād	al-Qasṭallānī, *Irshād al-sārī*, a commentary on the *Ṣaḥīḥ* of al-Bukhārī.
Itḥāf	ᶜAbd al-Salām al-Laqqānī, *Itḥāf al-murīd*, a commentary on the verses of his father Ibrāhīm al-Laqqānī entitled *Jawharat al-tawḥīd.*
al-Jāmiᶜ	Appears to be a commentary on the *Mukhtaṣar* by the author himself, though the long biography of him by Aḥmad Bābā (*Nayl*, 112-5) makes no mention of it and the work has proved untraceable.
Jawāhir	Not clearly identifiable, but perhaps the *Jawāhir al-Jalīl*, a commentary on the *Mukhtaṣar* by al-Ujhūrī, or the *Jawāhir al-durar*, a commentary on the same work by al-Tatā'ī.
Kashf	Aḥmad Bābā, *al-Kashf wa 'l-bayān li aṣnaf majlūb al-Sūdān.*
al-Kharashī	al-Kharashī's Commentary on the *Mukhtaṣar* of Khalīl.
al-Khāzin	*Lubāb al-ta'wīl fī maᶜānī 'l-tanzīl.*
Madārik al-tanzīl	al-Nasafī, *Madārik al-tanzīl.*
Madkhal	Ibn al-Ḥājj, *Madkhal al-sharᶜ al-sharīf.*
al-Maḥallī	*Tafsīr* (see under *Takmila* below).
Miᶜyar	al-Wansharīsī, *al-Miᶜyār al-mughrib.*
Mudawwana	Saḥnūn, *al-Mudawwanat al-kubrā.*
Mukhtaṣar	Khalīl b. Isḥāq, *al-Mukhtaṣar.*
Naṣīḥa	al-Mukhtār al-Kuntī, *al-Naṣīḥat al-kāfiya.* No work of this title by this author has been traced (see n. 3 to p.48 of the translation).
Nasīm al-riyāḍ	Commentary of Aḥmad al-Khafājī on the *Shifā'* of ᶜIyāḍ.
Nawādir	al-Qayrawānī, *Kitāb al-nawādir.*
al-Nukat	Untraceable; the word occurs as the first element in many book titles.
al-Qawānīn	Ibn Juzayy, *al-Qawānīn al-fiqhiyya.*

Rā'iḥat al-janna	al-Nābulsi, commentary on *Iḍā'at al-dujunna.*
Risāla	al-Qayrawānī, *al-Risāla.*
al-Shabrakhītī	al-Shabrakhītī's Commentary on the *Mukhtaṣar* of Khalil.
Shurb al-zulāl	al-Barnāwī, *Shurb al-zulāl.*
Taḥqīq al-mabānī	al-Mālikī's commentary on the *Risāla* of al-Qayrawānī.
Takmila	al-Suyūṭī's completion of al-Maḥallī's *Tafsīr;* the two parts together are commonly known as *Tafsīr al-Jalālayn.*
Taᶜlīm al-rāḍī	ᶜAbdullāh b. Fūdī, *Taᶜlīm ᶜal-rāḍī.*
al-Tatā'ī	Commentary of Muḥammad b. Ibrāhīm al-Tatā'ī on the *Mukhtaṣar.*
al-Ṭawāliᶜ	al-Bayḍāwī, *Ṭawāli' al-anwār.*
al-Waghlīsiyya	Versified 'creed' (*ᶜaqīda*) by ᶜAbd al-Raḥmān al-Waghlīsī of Bougie (d. 1384).
Walī 'l-Dīn in his *Bahja*	Ibn Abī Jamra, *Bahjat al-nufūs,* a commentary on the *Ṣaḥīḥ* of al-Bukhārī.
Yaḥyā's *Samāᶜ*	The rescension of Mālik's teachings according to his pupil Yaḥyā b. Yaḥyā al-Maṣmūdī (d. 848).
al-Zaharāt	*al-Zaharāt al-wardiyya,* a collection of the *fatwās* of al-Ujhūrī by a certain ᶜAbd al-M(ut)aᶜālī.

THE EXPOSITION OF THE OBLIGATION OF EMIGRATION UPON THE SERVANTS OF GOD AND THE EXPOSITION OF THE OBLIGATION OF APPOINTING AN *IMĀM* AND UNDERTAKING *JIHĀD*

1A // In the name of God, the Merciful, the Compassionate. May God bless our lord Muḥammad, his family and his Companions, and save them. Says the poor servant who is in need of the mercy of his Lord, ᶜUthmān b. Muḥammad b. ᶜUthmān b. Ṣāliḥ b. Muḥammad b. Hārūn known as Ibn Fūdī, may God envelop him with His mercy—Amen!

1B //Praise be to God, the Lord of the worlds, and may most gracious blessing and perfect peace be upon our lord Muḥammad, and on all his family and Companions. And may God be well pleased with the Followers, the practising scholars and the four *imāms* who exercised *ijtihād* and those who follow their pattern to the Day of Requital.

Now to proceed, this is the book [called] *'The Exposition of the Obligation of Emigration* [1] *upon the Servants of God and the Exposition of the Obligation of appointing an Imām and undertaking Jihād.'* I say—and success is from God—I have set out this book in sixty-three chapters, this being the number of years the Prophet lived. It will be a useful book, if God wills, for all those who rely upon it in this age.

Chapter 1. On the obligation of emigrating from the land of the unbelievers.

2A Chapter 2. On the interpretation of the saying of the Prophet, 'No emigration // after the conquest [of Mecca]'.

Chapter 3. On God's praise for the emigrants who went out from their homes, abandoning their belongings to the unbelievers and exposing themselves to suffering, distress and [the risk of] being killed for the sake of the *Hijra*, and His praise for the *Anṣār* who gave them shelter and help.

Chapter 4. On the prohibition of befriending the unbelievers.

Chapter 5. On the obligation of befriending the believers.

Chapter 6. On the obligation of appointing an *imām*.

Chapter 7. On the qualifications required in an *imām*.

Chapter 8. On the principles of the emirate.

Chapter 9. On the principles of the Islamic *wilāya*.

Chapter 10. On the divisions of the *wilāya*, run according to the *Sharīᶜa*.

Chapter 11. On the law of appointing governors over districts and the details of terms entered into with them; and the law // concerning gifts offered to them.

2B

Chapter 12. On attracting people to the *jihād*.

Chapter 13. On the law governing the *jihād*.

Chapter 14. On the continuity of the obligation of *jihād* upon the [Muslim] community after the time of the Companions until the time of Jesus.[2]

Chapter 15. On the definition of *jihād*.

Chapter 16. On the conditions that make *jihād* obligatory.

Chapter 17. On the precepts of *jihād*.

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1 See *EI* (2) art; *idjtihād*. The four imāms are those from whom the four law-schools derive; Abū Ḥanīfa, Mālik, Ibn Ḥanbal and al-Shāfiᶜī.

2 The time of Jesus refers to the end of this world because it is related in the prophetic traditions that Jesus will re-appear on the latter day; see al-Bukhārī, *Ṣaḥīḥ*, iv, p.205, Muslim, *Ṣaḥīḥ*, ii, p.193, and al-Bayḍāwī, *Anwār al-Tanzīl*, p.508.

Chapter 18. On the law concerning fighting in the 'sacred months'.
Chapter 19. Concerning those against whom a *jihād* should be undertaken.
Chapter 20. Concerning those whose help may be called upon in a *jihād*.
Chapter 21. On the law concerning the beating of drums in a *jihād* to frighten the unbelievers.
Chapter 22. On the law concerning the wearing of silk in a *jihād*.
Chapter 23. On the law concerning embellishing fighting weapons with gold and silver in a *jihād*.
Chapter 24. On the law concerning the tying of bells and cords[1] to the necks of beasts of burden in a *jihād*
Chapter 25. On the law concerning the giving of the standard to the Commander-in-Chief in a *jihād*.
Chapter 26. On the law concerning inviting the unbelievers to Islam before fighting [them].
Chapter 27. On the law concerning the acceptance of the unbelievers' profession of Islam and the law of taking *jizya* from them, if they are in a place where [Muslims] can be safe from their intrigues.
Chapter 28. On the art of military manoeuvres and tactics in a *jihād*
Chapter 29. On the law concerning boasting at the time of shooting [arrows], reciting *rajaz* poetry, declaiming one's genealogy (*tasmiya*) and shouting in a *jihād*[2]

3B Chapter 30. On the different methods used in fighting.
Chapter 31. On the law concerning fighting the unbelievers if they take shelter behind their children or behind Muslims.
Chapter 32. On the law concerning running away from the unbelievers in a *jihād*.
Chapter 33. On the different kinds of booty.
Chapter 34. On how the booty should be divided.
Chapter 35. On the law concerning cheating in the matter of booty (*ghulūl*) and whether a man can seize his share of booty if it is not divided according to the *Sharīʿa*.
Chapter 36. On the one-fifth of the booty (*khums*) and the other sources of income of the State Treasury and the law concerning the recovery of what oppressive governers and officials have sold out of the State Treasury.
Chapter 37. On the law concerning what the unbelievers take from the possessions of the Muslims.

4A Chapter 38. On the law concerning giving freedom to the slaves of // unbelievers dwelling in the Abode of War if they flee to us, and the permissibility of taking as concubines the women who have been captured from them, after waiting for the passing of one menstruation; even if they have husbands in non-Muslim territory (*dār al-ḥarb*)
Chapter 39. On the law concerning one who has been found as a slave in the hands of the unbelievers and claims to be a free-born Muslim or one who has been

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1 The Arabic word *awtār* simply means cords or strings—usually of a musical instrument; here cords tied round the necks of beasts with something attached to them to produce a jangling noise.

2 It was a traditional practice of the Arabs, right from pre-Islamic times, for warriors to stand out and declaim their noble ancestry and boast of their valour (*iftikhār* or *tasmiya*). This was usually in the form of verses in the metre *rajaz*; men of the opposing side would then reply also in *rajaz*.

captured in a *jihād* and claims to be a free-born Muslim [but] has not emigrated; or one who has been brought from a land where the selling of free men is commonplace and claims to be a free-born Muslim.

Chapter 40. On the law concerning the children and possessions of a dweller in the Abode of War if he has embraced Islam in non-Muslim territory and continues to live there or comes over to us leaving his children and possessions there.

Chapter 41. On the law concerning the possessions of the Muslims living voluntarily in non-Muslim land.

Chapter 42. On the law concerning the redemption of Muslim captives and afterward claiming the amount back [from the redeemed].

Chapter 43. On giving protection (*amān*).

4B Chapter 44. On making peace with dwellers in the abode of war on terms of truce.

Chapter 45. On laws concerning the *dhimmīs*

Chapter 46. On the difference between fighting born unbelievers and fighting apostates.

Chapter 47. On the difference between the fighting of rebels (*al-bughāt*) and the fighting of polytheists.

Chapter 48. On the difference between the fighting of brigands (*al-muḥāribūn*) and the fighting of rebels.

Chapter 49. On the law concerning the possessions of Muslims staying voluntarily with brigands.

Chapter 50. On the law concerning the possessions of missing persons and their wives' ᶜ*idda;* and the law concerning the washing of martyrs, shrouding them and praying for them.

Chapter 51. On pardon, forgiveness, censuring and chastisement.

Chapter 52. On preventing injustice and slander.

5A Chapter 53// On practices wherewith no state can survive.

Chapter 54. On qualities commendable both for princes and others.

Chapter 55. On keeping secrets.

Chapter 56. On a quality that makes it easy for the Commander of the Faithful and others to be friendly with all people.

Chapter 57. On the place of refuge for the Commander of the Faithful when his circumstances change; and on what may set his affairs right.

Chapter 58. On the way the Prophet acted (*sīra*) with people when he was sent to them.

Chapter 59. On the caliphate of Abū Bakr.

Chapter 60. On the caliphate of the Commander of the Faithful, ᶜUmar b. al-Khaṭṭāb.

Chapter 61. On the caliphate of the Commander of the Faithful, ᶜUthmān b. ʿAffān.

5B Chapter 62. On the caliphate of the Commander of the Faithful, ᶜAli b. Abi Ṭālib.

Chapter 63. On the caliphate of the Commander of the Faithful, al-Ḥasan b. ᶜAli.

CHAPTER 1

ON THE OBLIGATION OF EMIGRATING FROM THE LANDS OF THE UNBELIEVERS

I say, and success is from God: Emigration from the lands of the unbelievers is an obligation according to the Book, the Sunna and the *ijmāʿ*. As for the Book there is the word of God: 'Surely those whom the angels cause to die, while they are wronging themselves, [to them] the angels will say, "In what circumstances were you?" They will say, "We were weak upon the earth." [The angels will] say, "But was not God's earth wide, so that you might have emigrated in it?" As for such, their refuge shall be hell.'[1] The commentators said: 'And in this verse is a proof of the obligation of emigration from the lands of the unbelievers.' Al-Suyūṭī[2] said in his *Takmila*, explaining the meaning of the word of God, 'wronging themselves'; "[it means] by remaining among the unbelievers and failing to emigrate."

A As for the Sunna, there is the saying of the Prophet, 'God is quit of a Muslim who dwells among the polytheists', and his saying, 'The fires of a believer and an unbeliever should not be within sight of each another.' The [above] two *ḥadīths* were cited by our master al-Kuntī in his *Naṣīḥa*.[3] There is also the saying of the Prophet, 'He who mixes or lives with an unbeliever is just like him.' This was related by Abū Dāwūd on the authority of Samura.

As for the *ijmāʿ*, al-Wansharīsī said in his *Miʿyār*: 'And *ijmāʿ* upholds the obligation of emigration.'

Considerations of blood relationship and marriage should not be an excuse for anyone failing to emigrate. How much less possessions and dwellings! God has said: 'Say, if your fathers, your sons, your brothers, your wives, your clan, your possessions that you

B have earned, commerce you fear may slacken, dwellings you love // — [if these] are dearer to you than God and His Messenger, and striving (*jihād*) in His way', "so that you fail to emigrate because of it", as explained in the *Takmila* of al-Suyūṭī, 'Then wait till God brings His decree.'[4] And according to the commentary of al-Khāzin, the occasion of the revelation of this verse was the saying of those who accepted Islam but did not emigrate: 'If we emigrate, our possessions will be lost, our commerce wasted, our dwellings ruined and we will have broken our bonds of kin.' He [al-Khāzin] then said: 'And in this verse also is a proof that whenever there occurs a conflict between religious matters and worldly interests, a Muslim is obliged to give preference to the matter of religion over the

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Qur'ān 4, v. 97.

Brief biographical details of the authorities cited in the *Bayān* will be found in the Appendix.

Al-Mukhtār b. Aḥmad b. Abī Bakr al-Kuntī (1729–1811) wrote 65 works according to Charles C. Stewart (*Research Bull*, CAD, iv (1968), pp. 1–25). His *Naṣīḥa*, which is widely quoted in Sokoto literature, has not been located. Al-Kuntī's name appears in the Shehu's *al-Salāsil al-Qādiriyya* (ms. Ib. 82/110, chapt. 7) as he was in correspondence with the latter and his *wird* was read at Sokoto (see *Infāq*, pp. 200–7). Al-Kuntī is referred to in the poems by the Sokoto *jihād* leaders in terms of deep veneraton. He was evidently a highly respected Qādirī leader from whom Sokoto reformers appear to have drawn considerable inspiration. Al-Kuntī and his family occupied much the same position in matters of learning on the Niger bend as did the Shehu and his family in Hausaland.

Qur'ān 9, v. 24.

worldly interests.'[1]

I would add that it is likewise necessary to give preference to its preservation over the rest of the five universal rules,[2] which are: preservation of the soul, the intellect, lineage and wealth; some also added honour.[3] Al-Laqqānī said in his *Itḥāf* // regarding the words of the versifier:[4]

7A

And the preservation of religion, soul, wealth and lineage
And likewise of intellect and body is obligatory.

The most important of the five is religion, because the preservation of the others is [only] a means of preserving it. Then comes the preservation of souls, then of minds, then of lineage, then of possessions; and of the same importance as the latter is the preservation of honour so long as injury to it does not lead to breaking bonds of kin;[5] otherwise it comes on a level with the preservation of lineage.' Then he [al-Laqqānī] said: 'In all systems of divine law it is essential to preserve all of them because of their honourable status.'

If you have understood what has gone before, you will realize that according to the Book, the Sunna and *ijmāʿ*, one is obliged to emigrate from the unbelievers' lands, among which are most of *Bilād al-Sūdān*, for its lands fall into three classes as may be understood from the writings of the learned men. One of these is [a land] where unbelief predominates and Islam is rarely found, such as the lands of Mossi, Gurma, Busa, Borgu, Yoruba, Dagomba, Kutukuli, T.n.b.gh., Būbul and Gh.m.bi, according to the examples given by Aḥmad Bābā in his *Kashf*.[6]

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1 This long chapter seems to have been addressed to those who had reasons not to heed the call to emigration or were diffident about answering it. Indications of reluctance or indifference among some Fulani is provided by the fact that 'Abdullāh had to appeal specifically to certain of them after the *jihād* had already got under way (*Tazyīn*, pp. 59–61).

Among the Hausa peasants, emigration, even if they accepted the faith, was fraught with difficulties which did not apply to the nomadic culture of large groups of Fulani. At the beginning of hostilities therefore, while they still had a choice, their reluctance to emigrate is reflected by the support which the Gobirawa peasants gave to the traditional government. This support can be inferred from the ability of the Gobir government to sustain the resistance at Alkalawa for four years. In other places, such as Kebbi and Zamfara, once the *jihād* rocked the basis of the peasants' livelihood through requisition of food and provisions by the jihādists, the peasants' initial co-operation turned first to coldness and thereafter to hostility. Unlike nomads, the sedentary culture of the peasants meant that materially they had everything to lose by emigration.

2 The term universals *(kulliyyāt)* in Islam is borrowed from Aristotle's logic. Muslim philosophers translated the five predicables of logic as *al-jins* (genus), *al-nawʿ* (species), *al-faṣl* (difference), *al-khāṣṣa* (property) and *al-'araḍ* (accident). See Lane, *Lexicon*, Suppl. p. 3002.

3 The writer presupposes that religion comes at the top of the list. The universals are six when *al-'irḍ* (honour) is added.

4 The versifier is Ibrāhīm al-Laqqānī (d.1631) who put into verse the basic articles of *tawḥīd* (belief in the unity of God) in his work *Jawharat al-tawḥīd*; his son, 'Abd al-Salām, made a commentary on it in prose and entitled his work: *Itḥāf al-murīd sharḥ jawharat al-tawḥīd*. There are also numerous commentaries on this work by other writers.

5 The relationship of *'irḍ* (honour) to *nasab* (lineage) is made clear by Ibrahim al-Bājūrī (d.1861) in his commentary on al-Laqqānī's *Jawharat al-tawḥīd*. He said: 'If a husband accuses his wife of adultery and so denounces his child, *'irḍ* is as important as lineage'. See *Tuḥfa*, p. 115.

6 Aḥmad Bābā in fact divides the lands of the Sūdān into two types; those in which Islam predominates and those in which unbelief predominates. This arose from the question which he was seeking to answer in his *al-Kashf wa 'l-bayān*—namely which peoples might lawfully be taken as slaves. A discussion of the *Kashf* is included in the Introduction above (pp. 35–6).

7B All these are lands of unbelief without any doubt, // for judgement is passed with reference to the majority. All the rulers of the lands of this class are unbelievers also, and the status of a land is that of its ruler as will be mentioned below, if God wills.

Another class is those lands where Islam predominates and unbelief is rare such as Borno, Kano, Katsina, Songhay and Mali according to the examples given by Aḥmad Bābā in the aforementioned book. These, too, are lands of unbelief without any doubt, since the spread of Islam there is [only] among the masses but as for their sultans, they are unbelievers just like [those of] the first division, even though they profess Islam. [That is] because they are polytheists, turning [people] from the path of God and raising the banner of the kingdom of this world above the banner of Islam—and that is all unbelief according to *ijmāʿ*. And it is undisputed that the status of a land is that of its ruler—if the ruler be a Muslim, the land is a land of Islam and if he be an unbeliever, the land is a land of unbelief, from which flight is obligatory.[1] On account of this, Aḥmad b. Saʿīd said in his *Mukhtaṣar:* 'There is no disagreement about the obligation upon Muslims to depose their leader if he is an unbeliever. But it is only incumbent on them to rise // against him if they think they can overcome him, [but] if they realise their inability to do so, they are not obliged to rise against him. However, every Muslim is obliged to emigrate from such a ruler's land to somewhere else.'

8A

What we have mentioned [above, regarding the fact] that the sultans of this [second] division are unbelievers, is based on what is generally observed about them. This does

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– The identification of the groups mentioned by Aḥmad Bābā presents one or two problems. Mossi, Gurma, Busa, Yoruba and Dagomba presumably refer to groups from whom the modern peoples bearing these names descend. Borgu probably refers to the Bariba of N.E. Dahomey and west-central Nigeria who are also known as the Borgawa.

Kotokoli is a little more difficult. According to Froelich and Alexandre ('Histoire traditionelle des Kotokoli..' Kotokoli was a 'confederation' whose founders came from Gurma to N. Togo towards the end of the seventeenth century, though the first Kotokoli chiefdoms we not founded until the mid-eighteenth century. Aḥmad Bābā appears to mention them in 1615–16. Perhaps, then, there was already in his day a people called the Kotokoli from which the confederation later derived its name; it is also possible that the name was a later interpolation by a copyist.

Būbul perhaps stands for Bobo-ule, the 'red' Bobo who inhabit nowadays an area between Jenne, the Black Volta and Bobo Dioulasso (see Baumann and Westermann, *Les Peuples et les civilisations de l'Afrique*, p.405.) T.n.b.gh is more problematical. If the final *ghayn* is read as *'ayn*, however, we obtain the reading Tunbu' or Tombo, a name by which the Dogon have been known (see Baumann and Westermann, *op. cit.*, p.406). They are a people likely to have been known to a Timbuktu writer.

Gh.m.bi is the most difficult to identify. It is hardly likely to refer to Gombe in Nigeria. For one thing Gombe is the name of an area not of a people and for another Aḥmad Bābā's knowledege of Nigeria went no farther south-east than Kano and Katsina, it would appear. All the other groups he mentions inhabit lands in an arc between the eastern and western arms of the Niger Bend and it is no doubt there that we should also look for Gh.m.bi. The name may perhaps arise from a copyist's inaccurate repetition of Daghomba or be a later interpolation.

1. c.f. the famous maxim in mediaeval Christianity, *cujus regio ejus religio*, as expounded in the Religious Peace of Augsburg, 1555. The Princes were allowed to choose between the Roman and the Lutheran faith but the subjects had either to conform to the above maxim or migrate, see P. Smith, *The Age of the Reformation* (London. 1920), p. 130. The formula, however, is proverbial in Islamic literature in such sayings as: *al-nās atbā' man ghalab* (people follow the strong), or *al-nās 'alā dīn mulūkihim* (people follow their king's religion). The great influence a ruler can exercise on his subjects is mentioned in the Qur'ān (5, vv. 42, 44, 45) and elaborated by scholars, but to my knowledge, nowhere is it mentioned categorically that if the ruler is an unbeliever and his subjects are Muslims, their land belongs to that of unbelief and a *jihād* should be waged against them, as suggested here.

not mean that some of them may not be Muslims in rare cases, [but] the exception carries no [legal] weight.

The [third] class of lands in *Bilād al Sūdān* does not belong to the lands of unbelief either as regards the rulers or as regards the masses but belongs wholly to the lands of Islam and this class is unknown to us in *Bilād al-Sūdān*, but its existence can be inferred from what the learned men have said, as will be shown—if God wills.

Our master al-Kuntī said in his *Naṣīḥa:* 'The Sūdān is a land where unbelief prevails among the majority of its people and all the Muslims there are under the domination of the unbelievers whom they have recognised as rulers. And people generally adopt the behaviour of their ruler remaining in the darkness of ignorance, wilfulness and unbelief. This is why it is forbidden to travel into the land of enemies and *Bilād al-Sūdān*.

8B Abū 'l-Ḥasan // in *Taḥqīq al-mabānī*, a commentary on [al-Qayrawānī's] *Risala*, explaining the author's words: 'To make trading [journeys] to enemies' lands and to the Sūdān is reprehensible', said: 'that means [trading journeys to] the unbelievers among them.' It amounts to his saying that trading with the land of enemies is reprehensible, be they Sudanese or otherwise. Then he said: 'Dāwūdī said, "As for *Bilād al-Sūdān*, it has been said that the meaning of this is the lands of unbelief therein." This statement indicates that within *Bilād al-Sūdān* are lands of unbelief as well as lands of Islam as has previously been indicated. And that is the apparent meaning of Aḥmad Bābā's account in his *Kashf*. But I have read in the writings of a certain scholar [a statement] which reports that there are absolutely no lands of Islam in *Bilād al-Sūdān*. He says therein: 'The sultans of *Bilād al-Sūdān*, which are lands of unbelief having nothing in common with lands of Islam, have all, one after another, rendered the *sharīʿa* of our Prophet Muḥammad ineffective.' And God knows best.

If you ask whether the Muslims among the people of the Sudan accepted Islam through

9A being conquered or whether they professed it voluntarily, // I would say that the answer to this is as was stated by Shaykh Aḥmad Bābā in his *Kashf* when he said: 'They accepted Islam without being conquered by anybody.' In another place he said: 'It appears from what Ibn Khaldūn and others said that those who became Muslims from among the Sudanese did so voluntarily without being conquered by anybody.' Again, he said; 'One of the Sudanese *qāḍīs* said that the *imām* who conquered them while they were unbelievers preferred to let them remain as slaves.'[1] Then Shaykh Aḥmad Bābā said; 'This is something we have never heard of, nor was it transmitted to us; so ask this Sudanese *qāḍī* who that *imām* was. When did he conquer their land and which areas did he conquer? Let him specify all that to you. It is very likely that his [the *qāḍī's*] account is untrue, for if you inquire nowadays you will not find anybody who can confirm the truth of what he said. So what is based on his report cannot be taken into consideration and it appears most likely that it is unauthentic.'

If you were to ask what the limits of the Sudan are, I would say that I have not found any one who has attempted to define its beginning and end, but *imām al-ḥafaẓa*, Walī

9B 'l-Dīn Ibn // Khaldūn said in *al-Ta'rīkh al-kabīr*, [2] in his account of the kings of the Sudan neighbouring the Maghrib: 'Among the Sudanese nations are the Tājira, next to

1. The significance of this statement is that any people who accept Islam voluntarily cannot be enslaved. On the other hand, if a people are conquered by Muslim forces, their *imām* is free to enslave them, to free them or to accept ransom from them.

2. *Al-Ta'rīkh al-kabīr* was apparently the title by which Ibn Khaldūn's *Kitāb al-'ibar* was known in the Sudan.

them are the Kanem; to the West of these are the Kawkaw and after them come the Takrūr.' He also said in the fourth volume, when writing about the nations of the Sudan, 'And the Ethiopians are the greatest nation of the Sudan.'

What we have been discussing since the beginning of this chapter with regard to the fact that emigration from the lands of the unbelievers is obligatory on all Muslims, cannot be disputed and nobody is excused for neglecting it except the weak. God has said: 'Except the weak from among men, women and children who have not the means', i.e. who have neither the power nor the funds to emigrate, 'Nor can they find a way [to escape]',[1] i.e. a way towards a land into which they can emigrate, as al-Suyūṭī said in his *Takmila*. In his commentary, explaining the meaning of His word '[who] have not the means', al-Khāzin said: 'It means those who have neither the means, the funds, nor the power to emigrate from Mecca.' Concerning such people God has said: 'As for those

10A people, // it may be that God will pardon them'.[2] The commentators said that the expression indicating hope [i.e. it may be] and that indicating pardon were mentioned to warn people that failure to emigrate is so grave a matter that even a man in difficult circumstances ought not to feel at ease and should be on the look out for [a way of obeying] the divine precept and set his heart upon it.[3]

O brethren, it is incumbent upon you to emigrate from the lands of unbelief to the lands of Islam that you may attain Paradise and be companions of your ancestor Abraham, and your Prophet Muḥammad, on account of the Prophet's saying, 'Whoever flees with his religion from one land to another, be it [merely the distance of] the span of a hand, will attain to Paradise and be the companion of Abraham and His Prophet Muḥammad.

1. Qur'ān 4, v. 98.
2. Qur'ān, 4, v. 99.
3. The commentator quoted appears to be al-Bayḍāwī. See *Anwār al-tanzīl*, p.95.

CHAPTER 2

ON THE INTERPRETATION OF THE SAYING OF THE PROPHET: 'NO EMIGRATION AFTER THE CONQUEST [OF MECCA]'

I say, and success is from God: It is mentioned in al-Bukhārī's *Ṣaḥīḥ*, on the authority of Ibn ʿAbbās, that the Prophet said on the day of the conquest of Mecca, 'No emigration after the conquest.' It is related also in al-Bukhārī's *Ṣaḥīḥ*, on the authority of // Mujāshiʿ b. Masʿūd that he [Mujāshiʿ] went with his brother Mujālid b. Masʿūd to the Prophet and said, 'This is Mujālid [who has come] pledging allegiance to you [promising] to emigrate.' The Prophet said, 'No emigration after the conquest of Mecca.' In al-Bukhārī's *Ṣaḥīḥ* again, [it is related that] ʿAmr b. Dīnār and Ibn Jurayj said that they had heard ʿAṭā' say, 'I went with ʿUbayd b. ʿUmayr, to ʿĀ'isha when she was camping in the neighbourhood of Thabīr and she said to us, "Emigration has ceased since God opened up Mecca to His Prophet."'[1]

10B

As for the interpretation of the Prophet's saying 'No emigration after the conquest,' the scholars have said that it means that there is no emigration from Mecca after [its] conquest, and becoming the abode of Islam. Regarding God's word: 'Surely those whom the angels cause to die, while they are wronging themselves', al-Khazīn said in his commentary, 'It means: by being polytheists. It has also been said that it means: by staying in the abode of polytheism. The reason for this was that God would not accept the profession of Islam from anybody after the *Hijra* of the Prophet // until he emigrated to him. Then this was abrogated after the conquest of Mecca by the saying of the Prophet, "No emigration after the conquest", as mentioned in the two *Ṣaḥīḥs*'[2] In addition al-Khāzin said in his commentary, explaining God's word in the Chapter of the Spoils:[3] 'And those who afterwards believed, and emigrated and strove hard along with you,' "[scholars] interpreted the meaning of the word 'afterwards' in different ways. Some said it meant after the truce of al-Ḥudaybiya, which was the second *hijra;* some took it to mean after the revelation of this verse; others said it meant after the battle of Badr." Then he said: 'The most correct interpretation is that the people meant were those of the second *hijra*, since it occurred after the first *hijra*, and because the first *hijra* [was the one which] ceased after the conquest of Mecca, since it had become an abode of Islam after the conquest.[4] This is proved by the Prophet's saying, 'No emigration after the conquest.' Al-Ḥasan said, "Emigration does not cease"'. Then he [al-Khāzin] said: 'The answer to

11A

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1. Before the conquest of Mecca it was an obligation on all the Muslims to emigrate to Medina. Mujālid failed to emigrate so when the Prophet returned to Mecca at the conquest he came to pay homage to him and to promise to 'perform the *hijra*'. It seems that some people had the idea that the performance of *hijra* from Mecca to Medina was in the nafure of a religious duty (*farḍ*) like prayer or fasting, the omission of which had to be made up for.
2. I.e. the *ḥadīth* collections of al-Bukhārī and Muslim.
3. *Sūrat al-Anfāl*, Qur'an 8,v.75.
4. The truce of Ḥudaybiya was in 628 A.D. When the Prophet led an army of 1,400 believers from Medina to Mecca, the Quraysh met him at Ḥudaybiya and concluded a pact in which Meccans 'and the Muslims were treated on equal terms. In January 630, the Prophet entered Mecca and the city submitted to his authority. So those who believed 'afterwards' might mean after 622 when the Prophet took refuge at Medina, or after 628 (after the Ḥudaybiya pact) or after 630 (the conquest of Mecca).

this is that what is meant by *hijra* is the particular *hijra* from Mecca to Medina. But as for a believer who is in a place where he is afraid to display his religion because of the unbelievers, then he has to emigrate to a place where he can practise it freely.' Al-Qasṭallānī said in his *Irshād:* // 'So long as a land of unbelief exists in the world, emigration from it is obligatory; for the law applies [wherever] the relevant circumstances exist.'

That is further proved by the Prophet's saying, 'Emigration will not cease until repentance ceases; and repentance will not cease until the sun rises in the west'. This is related by Abū Dāwūd on the authority of Muᶜāwiya. And according to Ibn ᶜAbd al-Salām: 'Emigration will be obligatory at the end of time just as it was obligatory at the beginning of Islam.'

If you were to ask if the profession of Islam of somebody who embraced it in the abode of unbelief but did not emigrate was valid, I would say that the answer is as given by al-Nafrāwī in his *Fawākih*: 'The author [i.e. al-Qayrawānī in his *Risāla*] did not make clear the law concerning dwellers in the abode of war (*ḥarbiyyūn*) becoming Muslims; whether they are allowed to remain in the abode of war or whether they should emigrate to the land of Islam. But it has been made clear by someone else who said: "If unbelievers become Muslims they have to emigrate if they are in a place where they come under the jurisdiction of the unbelievers, for if they do not emigrate, they will be disobedient to God and His Messenger, although their Islam will still be valid."'

12A Similarly no one disputes that whoever remains, by choice, in the land of // war is disobedient to God and His Messenger, or that such a man's testimony is invalid. It has been said in *al-Miᶜyār:* 'The testimony of *al-dajin* [1] is not valid, nor is that of their judges because they have been content to remain under the sovereignty of the Christians.' In *al-Miᶜyār,* also: 'Al-Māzarī was asked whether decisions arrived at in Sicily[2] by its *qāḍī* or by upright witnesses (*ᶜudūl*)[3] could be accepted or not, assuming we do not know whether their stay there was by choice or by necessity. He replied, "There is no doubt that the testimony of a man remaining in the land of war by necessity is valid. Likewise if his reasons for staying there were sound—if, for example, he hoped to guide the people in the abode of war [to Islam]. But if he chose to stay there living in the manner of polytheists (*bi ḥukm al-jāhiliyya*) and without any sound reason,[4] then there is no doubt that his integrity is questionable; and he whose integrity is evident but whose

1. The verb *dajana* means 'to become domesticated' (of a pigeon or a dog) hence *dajin* or *dājin* is one who has become habituated to living under a certain set of circumstances; here it means one who lives in the land of unbelief for no sound reason. *Mudajjan* (Sp. *Mudejar)* was a term applied to Muslims allowed by the Christians of Spain to remain where they were after the *reconquista*, on condition they paid tribute. (See Hitti, *History of the Arabs*, p. 551, n.1.)
2. Sicily was conquered by the Aghlabids of Qayrawān in the ninth century. In the latter half of the eleventh century, however, the island was captured by the Normans. But the Muslims continued to live there under Christian rule. (Ibid, pp. 602–9)
3. *'Udūl* sing. *'adl* or *'ādil* means equitable, blameless. Such men must possess rectitude of character and moral integrity. *Qāḍīs* used to keep a register of such witnesses qualified to give legal testimony.
4. The 'sound reason' may be personal in so far as an individual takes time to convince himself that the *hijra* called for is genuine and has to be undertaken. Many of the Prophet's companions joined him later in Medina. In Dan Fodio's case there were some Fulani scholars who even held office under the Gobir regime during the early stages of the *jihād* and later deserted Yunfa to join Dan Fodio. An example of this is the Galadima in Alkalawa, Doshero, a Katsina Fulani who had been sympathetic to Dan Fodio (*Infāq*, p. 84) while in the service of Gober. He later joined the *jihād* forces. Sharīf Bābā who was also a notable personality in Yunfa's court, having failed to persuade Yunfa to come to terms with Dan Fodio, later joined the *jihād*.

reason for staying there is not clear, then the rule is to give him the benefit of the doubt, unless circumstantial evidence points to the fact that his stay there was of his own choos-
12B ing. If an unbeliever appoints a man *qāḍī* the appointment is // invalid, nevertheless the *qāḍī's* decrees are binding because it is essential to protect people from one another."

Bear in mind, however, that all this concerns those who have not fought the unbelievers until they overcame them and were in a position to render Islam victorious, the place thus becoming an abode of Islam. In this respect al-Qasṭallānī in his *Irshād* quotes al-Māwardī as saying: 'If Islam could be granted victory in a land of unbelief, then that land would become thereby an abode of Islam. It is better to remain there than to leave, since it may be expected that others would accept Islam.'

CHAPTER 3

ON GOD'S PRAISE FOR THE EMIGRANTS WHO WENT OUT FROM THEIR HOMES, ABANDONING THEIR BELONGINGS TO THE UNBELIEVERS AND EXPOSING THEMSELVES TO SUFFERING, DISTRESS AND [THE RISK OF] BEING KILLED FOR THE SAKE OF THE *HIJRA* AND HIS PRAISE FOR THE *ANṢĀR* WHO GAVE THEM SHELTER AND HELP AND WHAT HE PROMISED THEM ON ACCOUNT OF THAT

I say, and success is from God: Many verses were revealed concerning this. God has
13A said: 'And [it is] for the poor emigrants // who were expelled from their homes and property, seeking God's grace and good pleasure, and helping God and His Messenger; they are the truthful ones. And those who made their abode in the city and in faith, before them love those who have emigrated to them, not finding in their hearts any need for what they have been given, and preferring [them] above themselves, even though poverty may afflict them'.[1] Again: 'And the foremost, the first of the emigrants and the helpers, and those who followed them in goodness—God is well pleased with them and they are well pleased with Him; and He has prepared for them gardens below which rivers flow, abiding therein forever. That is the supreme triumph.'[2] Again: 'And those who believe and have emigratted and struggled hard in the way of God, and those who have given shelter and help—those in truth are the believers; for them shall be forgiveness and generous provision'.[3] Again: 'And whoso goes forth from his house an emigrant to God and His Messenger, and then death overtakes him, his reward from God is assured; surely God is Forgiving, Merciful'.[4] And again: 'So those who emigrated and were expelled from their houses and
13B were persecuted // in My way and who fought and were slain, I shall surely acquit of their evil deeds, and I shall admit them to gardens below which rivers flow: a reward from God. And with God is the fairest reward'.[5]

These verses show that whosoever emigrates will inevitably be afflicted by suffering and distress. God has said: 'Or did you suppose you would enter Paradise without there having come upon you the like of [that which came upon] those who passed away before you? Suffering and distress afflicted them and they were so convulsed that the Messenger and those who believed with him said: When will the help of God come?'[6] In al-Khāzin's commentary; 'The meaning of this verse is:Did you suppose, O believers, that you would enter Paradise merely by believing, while there has not befallen you what befell those who have passed away before you from among the followers of prophets and messengers, such as hardships, ordeals, afflictions, and trials?' Shortly before this al-Khāzin said: 'When the Messenger and his Companions entered Medina at the outset of the *Hijra*, they were stricken with great suffering since they had emigrated without any posses-
14A sions, leaving their belongings and homes in the hands of the polytheists, // preferring to

1. Qur'ān 59, vv. 8–9. The reference is to the distribution of spoils among various needy and deserving groups and the verse continues the sense of the preceeding one.
2. Qur'ān 9, v. 100.
3. Qur'ān 8, v. 74.
4. Qur'ān 4, v. 100.
5. Qur'ān 3, v. 195.
6. Qur'ān 2, v. 214.

please God and His Messenger. The Jews manifested enmity towards the Messenger, while another group of people kept their hypocrisy secret. So God revealed this verse to console them.'

In a similar vein is what the commentators quoted Ibn 'Abbās as saying: 'The occasion of the revelation of God's word: "Surely those whom the angels cause to die, while they are wronging themselves, [to them] the angels will say, 'In what circumstances were you?' They will say, 'We were weak upon the earth.' [The angels will] say, 'But was not God's earth wide, so that you might have emigrated in it?' As for such, their refuge shall be hell."[1] [The occasion] was that a group of people from Mecca had embraced Islam but kept it secret. Then the polytheists forced them out [to fight] with them at the battle of Badr. Some of them were killed and the Muslims said [to one another], "Ask forgiveness for them." [As an answer to that] the above verse was revealed. The Muslims wrote it down and sent it to those Muslims still remaining with the unbelievers so that they would realise that they had no excuse [for staying with the unbelievers]. These Muslims then left [Mecca] but were met by the unbelievers who persecuted them and so they went back. So it was revealed: "And among men is he who says, 'We believe in God' but when he is hurt in God's cause, he mistakes the persecution of men for God's chastisement." Again, 14B this verse was written down // and sent to them and again they left [Mecca] and were met [by the unbelievers]; some of them escaped and some were killed.'

1. Qur'ān 4, v, 97.
2. Qur'ān 29,v. 10.

CHAPTER 4

ON THE PROHIBITION OF BEFRIENDING THE UNBELIEVERS[1]

I say, and success is from God: Befriending unbelievers is forbidden according to the Book, the *Sunna* and *ijmāʿ*. As for the Book, there is the word of God; 'Let not the believers take the unbelievers for friends in preference to the believers. And whoever does, that, has nothing to do with God.'[2] "I.e. in anything concerning God's religion", as al-Suyūṭī explained in his *Takmila*. God has also said: 'O you who believe, take not the unbelievers as friends in preference to the believers. Do you desire to give God a manifest proof against yourselves?'[3] "I.e. a clear proof of your hypocrisy", as al-Suyūṭī explained in his *Takmila*.

Again: 'And whoever of you makes them [the Jews and the Christians] his friends is indeed [one] of them'.[4] As [it says] in *Madārik al-tanzīl:* 'He who befriends them will be judged as one of them. That is an emphatic and strict ruling from God about the necessity of avoiding the followers of other religions.' Again God has said: 'O you who believe,
15A take not // as friends those who take your religion in mockery and as a sport from among those who were given the Book before you and the unbelievers—and fear God, if you are believers.'[5] The commentators said, explaining this verse: 'And He decreed the prohibition of befriending them because of their taking the Muslims' religion in mockery—[thus] indicating the reason [for the prohibition] and warning that whoever does this is most unworthy of being befriended and should be taken as an enemy'.[6] God has also said: 'If you do not do this', "i.e. do not befriend the believers and break with the unbelievers", 'oppression will reign on earth, and great corruption',[7] "owing to the strength of unbelief and the weakness of Islam," as al-Suyūṭī explained in his *Takmila*. And according to the commentary of al-Khāzin: 'Ibn Isḥāq said, "God has made the Emigrants and the *Anṣār* close friends in religion to the exclusion of others and has made the unbelievers friends of one another." God has also said: "If you do not do this", i.e. befriend the believers in preference to the unbelievers, "there will be persecution in the land and great corruption."[8] The persecution in the land is the power of the unbelievers and the great corrup-
15B tion is the weakness of the Muslims'. // Again God has said: 'You will not find a people who believe in God and the Last Day loving those who oppose God and His Messenger, even though they be their fathers, their sons, their brothers or their kinsfolk'.[8] On the contrary, they must bear ill-will towards them and fight them on account of the faith as happened to some of the Companions', as is [stated] in the commentary of al-Maḥallī.

1. The theme in this and the following chapters is frequently met in the Shehu's writings from the beginning of the second period in the history of the Community (about 1795). It is a vigorous appeal to the believers to break away from the unbelievers and join *Dār al-Islām*. It is definitely the theory behind the *jamāʿa;* for further discussion see the introduction p. 21.
2. Qur'ān 3, v. 28.
3. Qur'ān 4, v. 144.
4. Qur'ān 5, v. 51.
5. Qur'ān 5, v. 57.
6. This quotation is to be found in al-Bayḍāwī, *Anwār al-Tanzīl*, p. 118.
7. Qur'ān 8, v. 73.
8. Qur'ān 58, v. 22.

God has also said: 'O you who believe, do not take My enemy and your enemy for friends. Would you offer them love?'[1] "I.e. [mutual love] between you and them", as explained in al-Maḥallī's commentary.

As for the Sunna, many *ḥadīths* have been related concerning the prohibition of befriending the unbelievers. Among them is the saying of the Prophet: 'The fires of a believer and an unbeliever should not be within sight of one another'. The scholars have said its meaning is that there should be no friendship, counsel or living together as between an unbeliever and a believer. This was related by al-Kuntī in his *Naṣīḥa*.

16A As for the *ijmā'*, the Sunnī scholars are agreed on the fact that befriending unbelievers is unlawful // except in time of fear because of God's word: 'Unless you are greatly wary of them.'[2] In his *Takmila*, al-Suyūṭī said: 'That means unless you fear them greatly, in which case you can express friendship to them with your tongue, but not in your heart. This was the rule at a time when Islam had not yet gained strength; and it applies to a place where it may still be weak.' According to the commentary of al-Khāzin: 'Dissimulation (*taqiyya*)[3] should only be practised when one is in fear of being killed and then with a sincere motive. Moreover this *taqiyya* is [only] a licence, so that if one endured until one was killed the reward for that would be great. Some people, today, deny the validity of *taqiyya* holding that it was only [permissible] at the beginning of Islam before the religion was consolidated and the Muslims became strong; but now God has given power to Islam and the Muslims, so it is not [permissable] for the people of Islam to dissimulate before their enemy.'

1. Qur'ān 60, v. 1.
2. Qur'ān, 3, v. 28.
3. *Taqiyya* comes from the Arabic root *waqā*, the original meaning being 'to preserve, protect'. The doctrine of *taqiyya* was widely accepted, particularly by the *Shī'a* during times of strife between the rulers and the subjects. A Muslim may disavow his religious beliefs for personal security at times of persecution.

CHAPTER 5

ON THE OBLIGATION OF BEFRIENDING THE BELIEVERS

I say, and success is from God: Befriending the believers is obligatory on every Muslim according to the Book, the Sunna and *ijmāʿ*. As for the Book there is the word of God: 'And the believers, men and women, are friends one of the other'.[1] Again: 'The believers indeed are // brothers, so set [things] right between your brethren'.[2] Again: 'And set aright your differences'.[3]

16B

As for the Sunna, there are many *ḥadīths* bearing upon this. Among them is the Prophet's saying, as recorded in al-Bukhārī's *Ṣaḥīḥ*, on the authority of Anas, 'None of you is a [true] believer unless he desires for his brother what he desires for himself.' In Muslim's *Ṣaḥīḥ* it is reported on the authority of Abū Hurayra, that the Prophet said, 'Do not envy, nor deceive,[4] nor hate, nor plot against one another', — etc. giving the *ḥadīth* in full.

As for the *ijmāʿ*, the Sunni scholars are agreed on the obligation of befriending the believer. According to the *Risāla*: 'It is incumbent on a believer to ask God's forgiveness for his parents if they are believers, to befriend the believers and give them good counsel and no man attains [a state of] true belief until he desires for his brother what he desires for himself. This is the *ḥadīth* as it was handed down from the Messenger of God.' // [Al-Nafrāwī said in his] *Fawākih:* 'To befriend the believers means to meet with them and show them love and avoid what creates aversion such as rancour and envy—God forbid! To befriend here does not mean mere contact with them without sincere affection. And be it known that submissiveness, better known as humility, is of three kinds: obligatory, as for example humility towards God and His Messenger and towards the ruler and the scholar and towards one's father; or forbidden, as for example the expression of humility towards the unjust and the unbelievers, because humility shown to these is a humiliation in which there is no honour and a baseness from which one cannot be raised up; or commendable, as for example humility towards the servants of God other than those mentioned above. What is recognised by believers as correct is that the unbelievers should not be 'befriended' in the above sense, on account of God's word: "You will not find a people who believe in God and the Last Day loving those who oppose God and His Messenger, even though they be their fathers, their sons, their brothers or their kinsfolk".[5] On the contrary they should bear ill-will towards them and fight them if they are dwellers in the abode of war, but if they are *dhimmīs* // they should not be interfered with except within the dictates of necessity, because it is forbidden to harm a *dhimmī*.

17A

17B

1. Qur'ān, 9, v. 71.
2. Qur'ān, 49, v. 10.
3. Qur'ān, 8, v. 1.
4. The Arabic *la tanājushū* means do not practise *najsh* or *tanājush* signifying 'the bidding of one against another, successively increasing their offers', e.g. in a sale, not with the intention of buying but merely to increase the price for the other.
5. Qur'ān, 58, v. 22.

CHAPTER 6

ON THE OBLIGATION OF APPOINTING AN *IMĀM* AND THE OBLIGATION OF OBEDIENCE TO HIM AND THE UNLAWFULNESS OF REBELLING AGAINST HIM AND DEPOSING HIM FOR ANY REASON SHORT OF UNBELIEF

I say, and success is from God: Be it known that there is consensus on the point that it is the duty of the Muslims to appoint an *imām* according to the law. With regard to the words of the versifier:

'It is an obligation to appoint a just *imām;* Know that this is by divine precept, not the judgement of human reasoning.'

Al-Laqqānī said in his *Itḥāf;* 'That is, to appoint and instal an *imām*. This law is addressed to the whole community *(umma)* [1] as from the death of the Prophet until the Day of Resurrection; but when the influential men *(ahl al-ḥall wa 'l-ʿaqd)*[2] perform this task, it suffices for all, [3] no matter whether it be in times of civil strife or otherwise. This is according to the Sunnīs, and, when [the term] imamate is used unrestrictedly,[4] it means the Caliphate, which is an overall leadership embracing all religious and temporal affairs—[undertaken] on behalf of the Prophet.' Expounding the meaning of 'by divine precept' al-Laqqānī said; 'It means that the obligation of appointing an *imām* over the community is based on divine law, according to the Sunnīs, // for a number of reasons, the chief of which is the *ijmāʿ* of the Companions who so emphasised it that they considered it the most important of duties and were distracted by it from burying the Prophet. A similar [situation has occurred] following the death of every *imām* up to the present day. However, their disagreement on who is suitable for the office of Caliph does not detract from their agreement on the obligation of appointing one. Thus none of them said that there was no need for an *imām*.'

18A

Al-Subkī[5] said: 'According to the consensus of the Companions after the death of the Prophet, men should appoint an *imām* who will look after their interests. They gave this precedence over all other obligations and people have been abiding by this over the ages. Even if the appointed *imām* is not the most suitable, nevertheless the mere act of appointing him is sufficient to discharge the [religious] obligation.'

As for the obligation of obedience to him, al-Laqqānī, expounding the words of the versifier, 'Do not deviate from His plain command', said in his *Itḥāf:* 'That means [a command which is] clear and in accordance with the rules of Law, nor [should you devi-

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1. The phrase 'whole community' here is used in its most comprehensive sense and means all Muslims from the beginning of Islām to the end of the world.
2. *Ahl al-ḥall wa 'l-'aqd:* i.e. literally 'those who are qualified to loose and bind', signifying those influential among the Muslims who represent them in appointing and deposing an *imām*. The number of these men is not specified; at times even an appointment made by one man in the presence of two witnesses was recognised while reformers and modernists identify them with the whole nation or the body of the learned men. In the history of Islam, *ahl al-ḥall wa 'l-'aqd* were those men in the capital who wielded political power, having the consent of the scholars and the notable men. See *EI* (2), art. *Ahl al-ḥall wa 'l-'aqd.*
3. The election of an *imām* or caliph is a 'collective' duty *(farḍ kifāya)* which may be performed by one man on behalf of the entire community, as opposed to a 'personal' duty *(farḍ 'ayn)*, such as the performance of the five daily prayers, which must be carried out by every adult Muslim.
4. See p. 81, n. 1
5. Either Taqī 'l-Dīn or his son Tāj al-Dīn. The quotation has proved untraceable.

ate from] the commands of His caliphs and vicegerents, for it is incumbent on all subjects 18B // to obey them in all outward [acts] and inward [attitudes], because of God's word: "Obey God and obey the Messenger and those of you who are in authority,"[1] and the Prophet's saying: "He who obeys my *amir* is obedient to me and he who disobeys my *amir* is disobedient to me".

A tradition transmitted by Abū Dāwūd says: 'I enjoin upon you fear of God and to give ear to and obey[2] [one in authority], even if he be an Abyssinian slave'.

Aḥmad al-Zarrūq said: 'The rights to be accorded to rulers in their realms are four: hearing and obeying, avoidance of disagreement with them, even though they be perverse sinners, overlooking their shortcomings, though apparent, and being kindly disposed towards them even if they harm you.'

As regards the prohibition of revolting against a ruler, God has said: 'And hold you fast to God's bond together and do not scatter.'[3] In Muslim's *Ṣaḥīḥ* [it is related] on the authority of Ibn ʿUmar that the Prophet said: 'Whoever withholds his oath of obedience [to an *imām*] will have no excuse when he comes before God on the Day of Resurrection. And whoever dies without having pledged obedience [to an *imām*] will die a pagan death.' 19A Al-Subkī said: // 'Revolting against a ruler is not permissable. This is unanimously agreed upon if a ruler is equitable; this is also the prevailing view if a ruler is tyrannical, except in the opinion of the *Muʿtazila*.' Aḥmad al-Zarrūq said in his *Qawāʿid:* 'To maintain order is essential and to safeguard public interests is an indispensable necessity; for this reason there was unanimous agreement that it is forbidden to revolt against an *imām* by word or deed. This went to the extent that their *ijmāʿ* sanctioned the performance of prayers behind any governor or other [*imām*], be he righteous or sinful.'

Walī al-Dīn said in his *Bahja:* 'The Prophet enjoined keeping the pledge of obedience to an *imām* saying, "Even if he be a flat-nosed[4] [negro] with the froth of spittle[5] at the sides of his mouth, listen to him and obey him, though he scourge your back and lay hands on your property." Someone asked him, "What would you say if rulers appointed over us claimed their rights from us and withheld ours?" He said, "Give them their rights and ask God for yours, since God will question them concerning what He has entrusted them with." It is as a result of this that the power of Islam is maintained, laws are upheld 19B and enemies suppressed. Disunity produces the opposite // of this. Nor is it lawful to depose him except for unbelief.' *Rāʾiḥat al-Janna* states: 'We are not allowed to turn an *imām* out of his imāmate and depose him for whatever sin he commits—short of unbelief—whether secretly or openly, provided he does not regard [his sinful actions] as permissible in law. In the poem of al-Jazāʾirī:

A profilgate wanton should not be deposed except for unbelief, in which case he must be replaced.

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1. Qur'ān, 4. v. 59.
2. *Al-samʿ wa 'l-ṭāʿa* i.e. unquestioning obedience.
3. Qur'ān, 3, v. 103.
4. *Manfūkh al-khayshūm:* literally means a man with a bulbous nose; blown-out nostrils.
5. *Dhū zabībatayn:* in a serpent means having two small black spots above the eyes. It also means 'two collections of froth, or foam, or spittle, or of dry spittle, in the sides of the mouth, where the lips meet, next to the tongue.' See Lane, *Lexicon*, art. *zabīb*. The printed text of the *Bahja* itself includes the word 'negro' *(aswad)*.

In *Iḍā'at al-Dujunna:* 'He should not be deposed if he becomes sinful or tyrannical and oppressive. Nor should one revolt against him except if he disbelieves; who digs a pit of injustice shall surely fall therein'.[1]

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1. The above chapter elaborates the theory of the imāmate in Islam by emphasizing four points. The first two are the obligation of appointing an *imām* and obeying him. It is quite understandable that the Shehu should reiterate these two points at a time when he most needed help for the *jihād* (Nov. 1806). But he gives equal importance to two other points about the imāmate viz., no deposition of an *imām* and no rebellion against him for any consideration short of *shirk*. The underlying reason for the latter two points might be an awareness of the previous political disunity of Hausaland and a desire to secure paramountcy of a central authority in the person of the *imām*. The Hausa states had not only been independent but had often gone to war against one another. The neighbouring lands to the south-east, such as Bauchi and Adamawa, had also been in political fragmentation. By 1805, the Shehu appealed to the Sarakuna of the Hausa states to support his *jihād*, but all except Sarkin Zazzau, Jatau, refused to join him. (*Infāq*, p. 83).

CHAPTER 7

ON THE QUALIFICATIONS REQUIRED IN AN *IMĀM*

I say, and success is from God: The qualifications required in an imām are eleven, as enumerated in *Ḍiyā' al-Khulafā'*.[1] He should be:(1) a Muslim, for an unbeliever cannot

20A be made an *imām* according to *ijmā*ᶜ; (2) a just man, for an unjust person may act // arbitrarily and may transgress, so that people are deprived of their rights; (3) a male; (4) a free man; (5) adult; (6) of sound mind; (7) one qualified to give independent judgements *(mujtahid)* both in the 'roots' and 'branches' of the law, if such a man can be found; if not a "follower" *(muqallid)* will do; (8) courageous, not afraid of facing the enemy and enforcing the prescribed penalties *(ḥudūd)*; (9) a man of sound judgement and diplomacy in handling affairs, capable of being strict when necessary and lenient where leniency is required; (10) a man able to execute his decisions and commands; (11) in the case of the supreme *imām* he has to be from the tribe of Quraysh if one can be found who fulfils the the [previous] requirements; otherwise he should be from Kināna; in the absence of such a Kināni, he should be a descendant of Ismāᶜīl; if such a person is not to be found, then a non-Arab should be installed.[2]

Shaykh al-Sanūsī in his commentary on the poem of al-Jazā'irī said, with regard to the words of the versifier 'Its requirements'—"that is of the imamate"—'are numerous and have been expounded in books.' Having mentioned the above qualifications he [al-Sanūsī] said that it was mentioned in *al-Ṭawāli*ᶜ that some people had compromised over these three qualifications, i.e. numbers seven to nine, holding that the imamate of one

20B who does not fulfil them is still valid. Then he added, 'Shaykh Ibn ᶜArafa // has said, "This disagrees with what al-Āmidī said in his enumeration of the agreed qualifications [for the office of *imam*]"'.

I add that a further condition is that there should be only one *imām*, according to what al-Ubbī quoted from al-Āmidī at the beginning of [his commentary on] the chapter on the imamate in Muslim's *Ṣaḥiḥ*. Al-Laqqānī mentioned in his *Itḥāf*: 'According to *ijmā*ᶜ, it is not permitted for there to be more than one *imām* at the same time and in the same place. For the Prophet said, "Whoever pledges allegiance to an *imām*, giving him his hand in ratification thereof, and pledges his sincerest agreement, must obey him to the best of his ability. If another comes to contest [the office] with him, strike off the latter's head"; and in another rescension, "strike him with the sword, whoever he may be."[3] But al-Ubbī quoted Ibn ᶜArafa as saying that the tradition "if two caliphs are paid allegiance to, kill the second one" is only with respect to the place where the authority of the *imām* has reached, but as for a distant place, far away from the sovereignty of the *imām*, it is permissible to appoint there another *imām* from that particular region'.[4]

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1. On the possible identity of this work see Introduction above, p. 35
2. In contrast to the generality of Sunnī scholars, Ibn Khaldūn (ᶜ*Ibar*, i, p.397) held that Quraysh descent was not a *sine qua non* for the caliph.
3. The Shehu ends this chapter by arguing the validity of the existence of two caliphates if they are sufficiently far away from the sovereignty of each other. By so doing he sought legality for his imāmate in Hausaland in spite of the existence then of the Ottoman Caliphate. On the other hand, there was Aḥmad b. 'Alī, the Mai of Bornu who also called himself *amīr al-mu'minīn*. Muḥammad Bello (*Infāq*, pp. 122, 131) claims that the latter was only a pretender to this office. The Shehu compiled this chapter on the caliphate with a view, it seems, first to demonstrating the invalidity of Aḥmad b. 'Alī's claim. More fundamentally, it was crucial to Dan Fodio's movement that its standing with regard to the adjacent Bornu empire be defined closely. The Mais of Bornu had assumed the title of *amīr al-mu'minīn* since the fifteenth century (see Aḥmad b. Fartua, *The history of the first twelve years ....*, ed. H. R. Palmer). For the opposition to the Sokoto Caliphate by Shaykh Aḥmad of Masina, see Last, *Sokoto Caliphate*, p. 47 and B.G. Martin 'Five letters from the Tripoli archives', *JHSN*, ii (1962) p. 369 for a discussion of the loyalty maintained by the Mai of Bornu to the Ottoman Caliphate.
4. For an exposition of the various views on the lawfulness of a plurality of *imāms*, see Ibn Khaldūn, *'Ibar*, i,p.392.

CHAPTER 8

ON THE PRINCIPLES OF THE EMIRATE

21A I say, and success is from God: // Know that the principles of the emirate, according to *Ḍiyā' al-Khulafā'*, 'are five: first that the emirate be not given to one who aspires to it, because of the tradition related by al-Bukhārī, "We do not give charge of this affair of ours to one who seeks after it."[1] On the contrary the first principle is that the supreme *imām* is selected by the best Muslims from among their scholars and virtuous men, a man they are pleased to have as the Commander of the Faithful by virtue of his being the best of them and the most suitable for the office, just as, after the Prophet, the Companions chose Abū Bakr, and after him ʿUmar and likewise the other four [rightly-guided] caliphs. Had succession to the imāmate[2] been hereditary, they would not have succeeded one another in that manner. And if it were argued that Joseph claimed kingship by his saying, "Put me in charge of the storehouses of the land; I am a knowing guardian", [3] we would reply that Joseph was one of God's infallible prophets. He found that God's trusts were being frittered away in the hands of those who were not fitted for them; and the only way to fulfil those trusts was through his becoming *amir*. So he asked to be made *amir* when he realised that it was a duty specifically imposed upon him since there was nobody else
21B [fit for the task]. // That was an exception to the rule of not seeking after the emirate, in order that the poor might be given their due, not for the sake of any personal gain. It is also possible that it was revealed to him to do so.

'The second principle is to adhere to consultation. God has said: "And take counsel with them in the matter."[4] Because the person who seeks advice, if he is of sounder opinion than the one consulted, confirms his own view; if he is less knowledgeable, he benefits from another opinion. A certain king once said; "Your own high status should not stop you from adding other people's points of view to your own. For if you seek advice and are thereby successful, people will praise your opinions, but if you make a mistake they will share the consequences of your error. One of the worst qualities in a king is to be opinionated and to neglect consultation."

'The third principle is to avoid harsh measures. God has said : "Had you [the Prophet] been harsh and hard of heart they would have scattered from about you. "[5]

'The fourth and fifth principles are justice and charity (*iḥsān*).[6] God has said: "Surely God enjoins justice and charity" etc. to the end of the verse.[7] As for justice

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1. The *amirs* whom Dan Fodio appointed were noted for their learning and piety besides their command of large followings to fight in the *jihād*. A list of *nuwwāb* who were given flags by Dan Fodio was compiled by Last, (*Sokoto Caliphate*, pp. 53–4). The first *nuwwāb* were either the Shehu's students or students of other famous teachers but in many cases personally known to him. See R.A. Adeleye *Power and Diplomacy*, p.46.
2. *Wilāya*: v. *infra*, chapter 9,
3. Qur'ān 12, v. 55.
4. Qur'ān 3, v. 159.
5. Qur'ān 3, v. 159.
6. The Arabic word *iḥsān* has the meaning of doing good or thinking good of, being well-disposed towards others and treating them with sympathy. It seems best summed by the English word 'charity'—in its Biblical sense—not of course in the later sense of 'alms' etc.
7. Qur'ān 3, v. 159. The rest of the verse reads, 'But when you have made up your mind, put your trust in God. Surely God loves those who put their trust in Him.'

22A (*ᶜadl*), one aspect of it is the prophetic which messengers and prophets have brought. The essence of it is that the sultan should draw // the scholars near to him since they are the custodians of [religious] knowledge (*ᶜilm*). They are its guardians and propagators who know it thoroughly and show the way to God; it is they who uphold God's command, maintain the prescribed penalties of God and advise His servants. He [the ruler] should do nothing unless enjoined to do so by them. The other aspect of justice is the conventional; that is the practices the kings followed before Islam came, and by which they managed their worldly affairs. The king who ignored them was unsuccessful. When Islam came, it confirmed some of those practices and suppressed others.

'As for charity [*iḥsān*], it is the source of nobility of character. Since God knows that not everybody prospers through justice alone, but also stands in need of charity which is superior to justice, God has enjoined them both. To sum up, subjects stand in relation to the sultan in three groups—old, young and mid-way between the two. The sultan must treat the old one as a father, the middle one as a brother and the young one as a son. Let him, then, be dutiful to his father, generous to his brother and affectionate to his son'.[1]

1. The entire chapter is an abridgement of chapter II of al-Ṭurṭūshī, *Sirāj al-Mulūk*.

CHAPTER 9

22B // ON THE PRINCIPLES OF THE ISLAMIC *WILĀYA*[1]

I say, and success is from God: Know that the supports of the *wilāya* are the same four upon which sovereignty (*mulk*)[2] is based and without which it cannot stand, just as a bed cannot stand without four legs. The first support is an upright *wazīr* over the *wilāya* who wakens him [the ruler] if he sleeps, gives him sight if he cannot see and reminds him if he forgets. The greatest catastrophe which can befall rulers and subjects is to be deprived of good *wazīrs* and helpers.[3] One of the requirements of a *wāzīr* is that he should be truly benevolent and kind-hearted towards the people.

The second support of sovereignty is a *qāḍī* who is not restrained by anyone's censure from upholding God's law. It is stated in *al-Qawānīn:* 'The office of *qāḍī* embraces ten things. The first is to settle cases between litigants either by mutual reconciliation or by compelling them to accept a mandatory judgement. The second is to prevent oppressors from taking things by force, or from violating the law and so on, and to support the oppressed and help everyone to get his due. The third is to uphold the statutory penalties and 23A carry out // the commands of God. The fourth is to hear cases of homicide and injury. The fifth is to safeguard the properties of orphans and the insane and to appoint legal guardians over them. The sixth is to look after estates in mortmain (*aḥbās*). The seventh is the the execution of wills. The eighth is to contract marriages for women, if they have no guardian (*walī*), or if the guardian has stood in the way of their marrying (*ᶜaḍalahunna*).[4] The ninth is to care for the public utilities, such as the roads of the Muslims and the like. The tenth is to command the good and forbid the evil by word and deed.' There can be several *qāḍīs*. The *Mukhtaṣar* states: 'It is permissable to appoint more than one *qāḍī*, either to supervise all matters, or for a particular place, or for a particular branch of jurisdiction.'

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1. *Wilāya* is a general term for any legal competence, from the root *waliya* meaning 'to have power over something'. In constitutional law *wilāya* means the sovereign power = the Caliph, as used in this chapter, or power delegated by the sovereign, the office of a governor or *wālī* (synonymous to *Dīwān)* as used in the following chapter. See *EI* (1), art *walāya*.
2. The term *mulk* (kingship or sovereignty) is used in this chapter inter-changeably with the term *wilāya*. Later ᶜAbdullāh b. Fūdī argued with Dan Fodio that *mulk* is not an Islamic term. See Dan Fodio, *Najm al-ikhwān* and *Sirāj al-ikhwān* where he replies to 'Abdullāh's allegation that the term *mulk* contradicts the Islamic idea of *wilāya*. The argument of 'Abdullāh is expressed in his *Ḍiyā' al-sulṭān* and *Ḍiyā' ūlī 'l-amr wa 'l-mujāhidīn*. However, the Shehu was against using any of the Habe titles such as Galadima, Sarkin Yari, etc. (*Kal-Farq*, p. 563). Instead he suggested the Islamic titles, though ultimately the traditional titles persisted.
3. Before the *jihād* was proclaimed, the Community at Degel and elsewhere had their *imāms* and muezzins as well as judges to settle differences among them according to the *Sharī'a*. After the *jihād* such men were all either officially appointed or confirmed in their functions by the leader of the Community, Dan Fodio. Before the *jihād*, 'Abdullāh acted as chief counsellor to the leader, followed immediately by Bello. When the *jihād* became imminent, the leader was proclaimed Commander of the Faithful on the way to Gudu and other appointments in the hierarchy of the Caliphate followed as circumstances dictated. 'Abdullāh virtually retained the title of Chief *wazīr;* 'Umar al-Kammu, treasurer; 'Ali Jedo, Commander-in-Chief. For a detailed acount of appointments, see Last, *Sokoto Caliphate*, pp. 48–57.
4. A *walī* may debar the marriage of a woman under his guardianship. The verb used in Arabic for such debarring is '*aḍala*. A *qāḍī* can investigate cases where the guardian wishes to debar his charge from marrying. If the *qāḍī* finds there is no just cause for debarring, as in the case of a divorced woman who has already completed the '*idda* (see *Qur'ān* 2, v. 232) he may assume the duty of *walī* and complete the marriage contract.

The third pillar of sovereignty is a just chief of police (*ṣāḥib al-shurṭa*) who ensures that the weak obtain justice from the powerful. The fourth pillar is a commissioner of *kharāj* who collects [the tax] but does not oppress the subjects. *Ḍiyā' al-khulafā'* enumerates these four supports in this order. ᶜUmar b. al-Khaṭṭāb said, 'No governor can succeed without possessing four qualities: power to collect money from lawful sources and to use it in the right places, strictness without harshness and leniency without weakness.

23B If // one of these qualities is lacking, things will not go right for him'.

CHAPTER 10

ON THE DIVISIONS OF A *WILĀYA*, RUN ACCORDING TO THE *SHARĪ'A*

I say, and success is from God: Know that the scholars have divided the *wilāya* into twenty divisions, as Ibn al-ᶜArabī said in his *Aḥkām*.[1] They are: the overall Caliphate, the office of *wazīr*, jurisdiction (*qaḍā'*) [guarding of] frontier cities, review of torts (*radd al-maẓālim*), *jihād*, division of booty, division of the tribute (*fay'*), records, protected lands (*al-ḥimā*), levying of the poll-tax (*jizya*), levying of land-tax (*kharāj*), disciplinary wars (*ḥurūb al-maṣāliḥ*), [2] prayer, alms, pilgrimage, *ḥisba*, [3] *niqāba*, [4] fiefs (*iqṭā'*), and virgin land (*mawāt* = dead).

As for the office of Caliphate, it is authentic and everlasting. As for the office of *wazīr*, it is in conformity with the *Sharīᶜa*; it centres on a man, trustworthy both in his religion and intelligence, who is to be consulted by the caliph in all matters of his concern. In God's

24A Book, Moses is reported as saying: 'Appoint for me from my folk a *wazīr*, Aaron, // my brother. Confirm my strength with him',[5] and a tradition of the Prophet says, 'My *wazīrs* from the folk of heaven are Gabriel and Michael and my *wazīrs* from among the folk of the earth are Abū Bakr and ᶜUmar.'

As for the office of jurisdiction, the Prophet during his lifetime appointed ᶜAlī b. Abī Ṭālib to it when he sent him to Yemen, instructing him not to pass judgement in favour of either of the litigants before hearing the other's side of the case.

The office of guarding the frontier cities is divided into two parts. One is concerned with giving judgement and is dealt with by *qāḍīs*, and the other, which is given to those competent for it, is concerned with executing the judgement. The Prophet appointed a number of men to it among whom were ᶜAlī b. Abi Ṭālib and Muḥammad b. Maslama.

As for the review of torts, it is a foreign institution introduced by the later *wālīs* when people became corrupt. It has to do with cases beyond the *qāḍī's* power, and which, therefore, a man of greater authority has to look into. The case arises when there is a dispute between two weak persons, one of whom has been favoured, or if it is between a weak

24B and a strong man // or between two strong men but one has the advantage of being supported by men in authority such as *amīrs* and provincial governors acting unjustly; these are the cases which the caliphs took it upon themselves to settle. ᶜAbd al-Malik b. Marwān was the first to sit in judgement on such cases; then ᶜUmar b. ᶜAbd al-ᶜAzīz sat to restitute to the wronged, the rights which the Umayyads had usurped from them, since those wrongs were handled by *wālīs* against whom the *qāḍīs* had no power.[6] Then it became a traditional practice, though the office, in its original form, was within the scope

1. The Arabic text mentions the word *wilāya* in front of each of these divisions. I have omitted it here to avoid repetition.
2. This *wilāya* is not mentioned by Ibn al-ᶜArabī in his *Aḥkām*. The word 'disciplinary' is used here to translate *maṣāliḥ* because these wars were waged against apostates, highway robbers and rebels, see pp. 129-33.
3. *Ḥisba* is the office of the *muḥtasib*, the 'censor, inspector of the market'.
4. *Niqāba* means inquiry into genealogies.
5. Qur'ān 20, vv. 29–31.
6. According to al-Ḥājj Sa'īd (*Ta'rīkh Sokoto*, p. 12), Muḥammad Bello was famous for reversing judgements of the *qāḍīs*. Al-Ḥajj Sa'īd adds that Bello did not allow the judges a free hand in their posts but checked any of their decisions dictated by their own interests. This is in keeping with the jurisdiction of the court of review of torts (*radd al-maẓālim*) which was entrusted to the supreme ruler or *imām* (see the following chapter).

of jurisdiction of a *qāḍi;* but the *wālis* weakened the *qāḍis* so as to be in a position to oppress their subjects and put people in need of them. Then they would sit back and the injustices would continue.

As for the *jihād* and the division of *ghanima* and *fay'*, at every raid in which the Prophet was not present, he appointed a number of his Companions to be in charge of the armies and raiding parties. They divided the *ghanima* there on the spot and thus the two offices became inseparable. It is for the *imām* or *wālī* to separate them. The division of *fay'* was

25A known during the Prophet's lifetime,// and that established the office of the division of *fay'*.

As for the office of records, the Prophet had his clerks and so had the caliphs after him. Its purpose was to keep a record of the soldiers in order to know their stipends and to keep a record of possessions, so as to collect their tribute and give it to those who have a right to it.

As regards the office of *ḥimā*, it is well-known. Abū Bakr al-Ṣiddīq was the first person to appoint someone in charge of *ḥimā*. He appointed Usāma, his client, over the *ḥimā* of al-Rabadha and ᶜUmar appointed his client Hunayya over the *ḥimā* of al-Sarif. *Taᶜlīm al-rāḍī* states: 'Know that jurisdiction over the land is attained by the protection of an *imām* or his deputy, in that he prohibits grazing in a certain area so that it may be confined to [the pasturing of] certain riding beasts. That is allowed on four conditions. The first is that it is a prerogative of the *imām*, because of the Prophet's saying, "The *ḥimā* is only for God and His Messenger," and the *imām* is the vicegerent of the Prophet. The second is that the *ḥimā* is required for the welfare of

25B the Muslims. The third is that the *ḥimā* should not be so large as to reduce // people to straits; [rather] it should be an area surplus to the needs of the people of that place, such as dry river-beds, mountains, and virgin lands *(mawāt)*, not having within them trees or buildings belonging to anybody. The fourth is that the *ḥimā* should be for the animals used for *jihād* in God's path or for [animals] connected with them, such as horses kept for *jihād* or camels used as beasts of burden in God's path, [also] camels [reserved] for almsgiving and the animals of the poor. Al-Naqīᶜ, an area one mile by eight at the top of al-ᶜAqīq, twenty *farsakhs* from Medina was made a *ḥimā* by the Prophet for the use of the horses of the Emigrants. ᶜUmar protected al-Sarif,[1] a place near al-Tanᶜīm, where he put Hunayya in charge of the camels for almsgiving, and the animals of the poor. Al-Rabadha, an area one *barīd* by one, was also a *ḥimā* situated between [the two sacred cities of] Mecca and Medina *(al-ḥaramayn)*. Some caliphs after ᶜUmar enlarged the area of this *ḥimā*.

26A As regards the paying of *jizya* and *kharāj*, when the Messenger made peace with // Ukaydir Dūma and the people of Bahrein, he appointed al-ᶜAlā' b. al-Ḥaḍramī as *amīr* over them after having [the *jizya* and *kharāj*] assessed. If the caliph does not consider the assessment appropriate, he can send someone else to value it, as ᶜUmar did when he sent his officers to Iraq instructing them to survey the land and levy *kharāj* on it.

As for disciplinary wars, they are against three things: apostasy, highway robbery and rebellion. The first two occurred during the lifetime of the Prophet; he cut off the hands and feet of the highwaymen and blinded[2] them as happened in the case of the

1. *EI*, (2) art. *Ḥimā* has, incorrectly, 'al-Sharaf'.
2. It was not the shepherds who were mutilated and blinded, as this pharase seems to imply. The story, as related in al-Bukhārī's *Ṣaḥīḥ*, *(K. al-Diyyāt)* is that eight men of the tribe of ᶜUkl, having professed Islam to the Prophet, accompanied his camel-herder into the desert since they felt unwell and needed cure. When they were cured, they killed the herder and drove off the camels. When they were eventually caught, the Prophet ordered that their hands and feet be cut off and their eyes put out. They were then laid out in the sun to die. The relater of the *ḥadīth* remarks, 'What could be worse than what these people did? They apostatised, committed murder and stole.

shepherds after it was revealed, 'The recompense of those who fight against God and His Messengers[1] [etc. to the end of] the verse. God further explained war against apostasy through Abū Bakr al-Ṣiddiq ['s campaigns], and clarified its laws by means of him. All that is well explained in the books of *ḥadith* and *fiqh*. As regards fighting the rebels, God has expounded it in His Book, saying; 'And if two parties of believers fall to fighting, make

26B peace between them; and if one party persists in aggression against the other, // fight the aggressive one till it returns to God's command.[2] And God further explained that through ʿAlī b. Abī Ṭālib ['s struggle].[3]

As regards the holding of public prayer, it is both an office in its own right and a part of the office of the *amīr* for when the Prophet sent out an *amīr* [to the provinces], he was responsible for leading public prayer. But when the *wālīs* became corrupt and the conduct of none of them was acceptable [the governorship] remained in his [the *wālī's*] hands by *force majeure*, while a man whose conduct was acceptable was put in charge of leading prayers—a device aimed at appeasing the people and allowing them [the *wālīs*] to remain [in power].

As regards almsgiving, the Messenger of God appointed people to be in charge of it many a time.

As regards the *wilāya* of pilgrimage, it is peculiar to the place of pilgrimage. The first *amīr* sent for it was Abū Bakr al-Ṣiddiq when the Messenger of God sent him with the Chapter of Immunity[4] in the year 9 A.H. before the Farewell Pilgrimage. Then the Prophet sent ʿAlī to join him.

As regards the *wilāya* of *ḥisba*, it is of later introduction and has the widest scope of

27A all *wilāyas*—commanding the good // and prohibiting the evil, and as that was so frequently needed the rulers found they had to appoint a man to look into it in the big centres at regular hours.

The *wilāyat al-niqāba* was also a later introduction. It was created when claims to belong to the Hāshimite[5] family became numerous because they were then ruling the state. The *wālīs* then appointed men to keep a record of genealogies to ward off pretenders.

As far as the *wilāya* of land-grants *(iqṭā')* is concerned, it is stated in *Taʿlīm al-rāḍī*: 'The Prophet made Zubayr a grant of land in which were palm trees, belonging to the tribe of Banū 'l-Naḍīr and gave Tamīm al-Dārī, ʿAynūn, a village in Syria, before it was conquered. He also gave Thaʿlaba al-Khushani a part of his country before it was conquered and to Bilāl b. al-Ḥārith he gave the mines of al-Qabliyya.[6] A little before this statement he said: 'Know that whomever the *imām* gives a grant of land to, becomes the sole owner of it. It becomes his own property which he can sell or give away. It can be

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1. Qur'ān 5, v. 33 ('...' and strive after corruption in the land will be that they will be killed or crucified, or have their hands and feet on alternate sides cut off, or will be expelled out of the land').
2. Qur'an, 49, v. 9.
3. The reference here is to the dispute between ʿAlī and Muʿāwiya over the caliphate after the murder of ʿUthmān (A.D. 656).
4. Qur'ān 9.
5. The Hāshimite family is the branch of the Quraysh to which the Prophet belonged and from which the ʿAbbāsids traced their descent. The opposing branch was that of the Umayyads.
6. See Al-Māwardī, *al-Aḥkām al-sulṭāniyya*, (p.198), where the phrase reads: *al-maʿādin al-qabliyya*. Cf. the translation of this work by E. Fagnan, *(Les Statuts Gouvernementaux*, Alger, 1915), who translates it as 'les mines d'*El-Kabaliyya*' adding, '*Kabaliyya* est le nom donné aux vallées qui, partant des hauteurs qui séparent Yanbo' de Médine, se dirigent vers cette dernière' (p.426, n.2).

inherited from him whether it is in the desert or in an inhabited area. But the *imām* is not
27B allowed to grant anyone permanent possession of // a piece of *maᶜmūr* land taken by compulsion; nevertheless, [such a piece of land] may be granted for a limited period.[1] What is meant by *maᶜmūr* is land suitable for sowing or where there is immovable property of the unbelievers; otherwise a land is [classified as] *mawāt*, if it is not suitable for sowing or contains no immovable property of the unbelievers, even if it is suitable for growing trees. The reason why *maᶜmūr* taken by compulsion is not granted *in perpetuo* is because the mere acquisition of it makes it a *waqf*. But the *maᶜmūr* not acquired by compulsion, can be granted by the *imām in perpetuo* or for a limited period.

'On the other hand such land [annexed] through a peace treaty cannot be granted either for a limited period or *in perpetuo*. It is mentioned in *al-Nukat* that lands are of five categories: land acquired by compulsion (*ᶜanwatan*) which cannot be sold or given away but is to be retained for the benefit of the Muslims; land taken by peace treaty which is kept by its owners who can do what they like with it; land whose people embraced Islam while it was in their possession, and which belongs entirely to those people; land whose people fled, abandoning it, and this belongs to the *imām* who can deal with it according to
28A // his discretion; land whose owners have not accepted Islam and have not made peace [with the Muslims], and this the *imām* can grant to whoever he wishes.'

As regards virgin land (*mawāt*), there are laws concerning it, but it is not a *wilāya*. It is stated in *Taᶜlīm al-rāḍi:* 'Know that a virgin land can be obtained for possession by the act of cultivating it, or by virtue of its being adjacent to a virgin land which has been thus cultivated, or by the *imām* giving it to someone as a grant or by his making it a *ḥimā*. These then, are four ways [by which virgin land can be acquired].' Then he said: 'And know that to cultivate a virgin land—that is a land which has not been settled upon, and which is not owned by anybody—is subject to the *imām's* consent. If the *mawāt* is near to inhabited areas, a Muslim can cultivate it with the *imām's* consent, but a *dhimmī* cannot cultivate such land at all. On the other hand a virgin land far away from inhabited areas
28B can be cultivated even // by a *dhimmī* without seeking the *imām's* consent, except in Mecca, Medina and Yemen in the Arabian Peninsula. What is meant by 'near' an inhabited area is land within its *ḥarīm*, or areas a little beyond the *ḥarīm*. And 'far away' means land out side the *ḥarīm* and distant from it.' Then he said: 'If a Muslim cultivates an adjacent virgin land without the *imām's* consent, the latter can either ratify it or consider the man an intruder and order him to uproot [his cultivation], or pay him what it would be worth when uprooted and then retain it for the Muslims, or give it to somebody else.'

Further on he said: 'And know that whoever cultivates a virgin land has the rights of ownership over it, together with its *ḥarīm*. The *ḥarīm* of a village is its *muḥtaṭab* and its *marᶜā* i.e. the place from where the inhabitants collect their firewood for their use and where they graze their animals—a place which can be reached and returned from in a single day. Al-Kharashī and others said that nobody is allowed to erect in a *ḥarīm* a building or any other thing which would inconvenience the occupants of the area. Saḥnūn said: "As for a place so far from the inhabited area that animals cannot get to it in the morning and back from it in the same evening, then it is to be considered 'far away' and the *imām* should consult men of sound judgement about it." Al-Shabrakhītī said: "The
29A *muḥtaṭab* may be farther away than the *marᶜā* // or vice versa, but what seems clear is that the [boundary of the] *ḥarīm* is the farther of the two."

1. On the traditional connection between land-holding and political office in Hausaland, vide supra, p. 27.

'The *ḥarim* of a house surrounded by virgin land includes the area the occupants of the the house use at its entrance and exit and the places into which they throw rubbish and into which water from pipes and gutters flows. But as for a house surrounded by private property, nobody can claim a *ḥarim* for it; nevertheless, any occupant can make use of the *ḥarim* in front of his house provided it causes no inconvenience to his neighbours. If it does, he must be restrained. The *ḥarim* for gardens of palm-trees and the like is the area round the entrance and exit of which use is made. Those knowledgeable in this matter should be consulted about it. The *ḥarim* for a well used for irrigation or the like is the area around it which might cause harm to its water or to one taking water from it. The *ḥarim* of a well used to water animals is the area sufficient for a man coming to water his animals; likewise the *ḥarim* of a river is an area [wide enough] to preclude danger from those who come to it. None of these has any specific limit, according to Mālik and Ibn al-Qāsim.
29B But according to Saḥnūn, // the *ḥarim* of a well used for irrigation, a house, and a valley in unowned land, is twenty cubits. Ibn Shihāb stated that the *ḥarim* of a spring is five hundred cubits and the *ḥarim* of a river is a thousand cubits. The *ḥarim* of a road is seven cubits, because of a saying of the Prophet, 'If you disagree about a road, [make] its limit seven cubits."'

CHAPTER 11

ON THE LAW OF APPOINTING GOVERNORS OVER DISTRICTS AND THE DETAILS OF THE TERMS ENTERED INTO WITH THEM; AND THE LAW CONCERNING GIFTS OFFERED TO THEM

I say, and success is from God: As for the law of appointing governors over districts, Ibn al-ᶜArabi said in his *Aḥkām:* 'Those to whom authority is delegated are of many classes—the first is the supreme *imām* and the last is the slave put in charge of the property of his master.' Then he said: 'The Prophet said, "Everyone of you is a shepherd and everyone of you is responsible for his flock." Thus the *imām* is a shepherd over all the people, but he cannot look after all matters by himself; so it is inevitable that he should delegate certain powers. This delegation of power is of several types; the first is the appointment

30A of men over districts either in general or in particular. // So whomever he appoints in the latter case and charges with a specific task, must deal only with that particular task to which he has been assigned; and whomever he appoints in general, must be responsible for everything in the province.' In *al-Miᶜyār*, Ibn al-Ḥājj is quoted as saying: 'When the Commander of the Muslims appoints an *amir* over a place without restricting his *wilāya* at all, it is obvious that he is responsible for everything in that place.'

As for the details of the terms entered into with the governors, know—may God guide you aright—that according to *Ḍiyā' al-khulafā'*: 'It is essential that charge of affairs should be given to men of resolution, capability, sincerity and honesty. Appointments are to be made in pious fear of God, not arbitrarily. When ᶜUmar b. al-Khaṭṭāb sent out a governor, he would impose five conditions upon him: not to ride mules, not to wear fine clothes, not to eat choice food, not to employ chamberlains and not to close the door against people's needs and welfare. He used to say to him, "I do not appoint you over men's persons and honour nor over their wealth; I only appoint you to lead them in prayer and to settle their differences equitably."'[1]

30B As // to the law concerning gifts offered to them, there is a Prophetic tradition in Bukhāri's *Ṣaḥiḥ* that the Prophet appointed a man called Ibn al-Lutbiyya as governor. When the man returned to the Prophet, he said, 'O Messenger of God, this is for you and this was given to me as a present.' The Prophet said angrily, 'Why should a man whom we employ to perform a task for us say, "This is for you and this was given to me as a present?" Why should he not have stayed in the house of his father and mother to see if a present were sent to him there!'[2]

Mālik related that ᶜUmar b. al-Khaṭṭāb used to confiscate half of the governors' possessions when it became apparent that, after being appointed governors, they had wealth which they were not previously known to possess. That is due to the fact that, even though

1. The Habe *Masu Sarauta* (office-holders) seem to have had a large scope for tyrannizing the subjects (see *K.al-Farq*, pp. 560–563). In sharp contrast to it, the office-holder under the Muslim regime had a specific code of behaviour attached to the office. See for instance the letter of appointment given to Ya'qūb of Bauchi (Muhammad b. Bello, *Ta'rikh umarā' Bauchi*, pp. 26–7).
2. Dan Fodio condemns the giving of gifts to men in authority (see *K.al-Farq*, p. 561). He singles out *gaisuwa* which means 'gift of greeting' (or courtesy gift) and in effect bribe, to a superior. M.G. Smith (*Government in Zazzau* p.77) records that the king of Zaria, 'Abdullāh sent a hundred slaves to the Sokoto sultan, Aḥmad Rifā'i, on. the occasion of the latter's accession. The customary nature of voluntary gifts is emphasized in Adeleye (*Power=*

what a governor acquires without being bribed is lawful, nevertheless, he is not justified in taking it, because he is in a powerful position, by virtue of being a governor, and can gain lawfully what others cannot. So his surplus wealth has to be deposited in the State Treasury. ᶜAttāb b. Usayd once said, 'By God, the only thing I gained from the work the Messenger of God charged me with, was two garments which I gave to my client, // Kaysan.' 31A

In *Shurb al-zulāl* after [the verse]

> Leave everything which is taken [by the ruler] in return for passing judgement,
> Even if the judgement is just, do not consume it,

he said:

> And the like of that is the gift given to the governors, for all of it is unlawful profit from error.[1]

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and Diplomacy, pp.84-8) It seems however, that the giving of gifts by a subordinate to his superior is a manifestation of the persistence of an old Hausa custom. It is a matter of common knowledge that British Colonial administrators were embarrassed by this practice and from the early days of the British in Northern Nigeria, it had been found necessary to lay down the manner of procedure with regard to gifts given to officials of government. The custom persists even today. See M.G. Smith, 'Historical, and cultural conditions of political corruption among the Hausa', *Comparative Studies in Society and History*, vi, 2 (1964), pp. 164–94 and comment following on it by J. J. Van Klaeren.

1. See A.D.H. Bivar and M. Hiskett, 'The Arabic Literature of Nigeria to 1804: a provisional account', *Bull.SOAS* XXV (1962), pp. 119–23.

CHAPTER 12

ON ATTRACTING PEOPLE TO THE *JIHĀD*

I say, and success is from God: Many verses in the Book and sayings of the Prophet have dealt with [the question of] attracting people to the *jihād*. For example in the Book is God's word: 'So let those fight in the way of God who sell the present life for the world to come; and whoever fights in the path of God, be he slain or be he victorious, on him shall We bestow a mighty reward'.[1] Again: 'Those of the believers who hold back—unless they have an injury—are not the equals of those who struggle in the Way of God with their wealth and lives. God has preferred in rank those who struggle with their wealth and

31B their lives over the ones who hold back; // and to each God has promised good; and God has conferred upon those who struggle, over the ones who sit at home, the bounty of a great reward, degrees of rank from Him and forgiveness and mercy; surely God is ever Forgiving, Merciful'.[2] Again: 'Surely God has bought from the believers their lives and their wealth against the gift of Paradise; they fight in the Way of God; they kill, and are killed; that is a promise binding upon God in the Torah and the Gospel and the Qur'ān, and who fulfils his convenant more truly than God? Rejoice then in your bargain that you have made, for that is the mighty triumph'.[3] Again: 'Surely God loves those who fight in His way in ranks, as though they were a building well-compacted'.[4] And again: 'O believers, shall I show you a commerce that shall save you from a painful doom? You should believe in God and His Messenger, and should struggle in the Way of God with your wealth and your lives'.[5] This is an example of what is mentioned in the Book to attract people to the *jihād*.

32A An example of what // is related in the Sunna concerning this is the tradition in Bukhārī's *Ṣaḥīḥ* showing the merit of *jihād*, on the authority of Abū Hurayra who said, 'A man came to the Messenger of God and said, "Show me a task equal [in virtue] to [participating in] *jihād*." The Messenger of God said, "There is none"'. Again [in the *Ṣaḥīḥ*] Anas b. Mālik reported the Prophet as saying, 'Verily, an early morning departure in the Way of God or a late return from it [on the same day] is better than the world and what is therein.' Again [in the *Ṣaḥīḥ*], expounding the ranks of those who strive in the Way of God is the Messenger of God's saying, on the authority of Abū Hurayra, 'Verily, there are a hundred grades in Paradise which God has prepared for those who fight in a *jihād*. [The difference] between one grade and another is as great as [the distance] between the heaven and the earth.' Also in the *Ṣaḥīḥ* there is a tradition explaining the merit of keeping horses aside [for the *jihād*], on the authority of Abū Hurayra who had it from ᶜAbdullāh b. ᶜUmar, who said, 'The Messenger of God said, "Whoever keeps a horse for the Way of God, believing in God and sure of [the realization of] His promise, will have what it eats and what it drinks, its dung and its urine put in his balance on the Day of

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1. Qur'ān 4, v.74.
2. Qur'ān 4, vv. 95–6.
3. Qur'ān 9, v.111.
4. Qur'ān 61, v. 4.
5. Qur'ān 61, vv. 10–11.

32B // Resurrection.'"[1] And again expounding the merit of a person who equips a fighter in the Way of God or looks well after his family at home, on the authority of Zayd b. Khālid who reported the Messenger of God as saying, 'He who equips a fighter in the Way of God or looks well after a fighter's family at home is as good as one who fought.' And again in the exposition of the merit of keeping horses aside [for the *jihād*] on the authority of Sahl b. Saᶜd al-Sāᶜidī, is the saying of the Messenger of God, 'Keeping horses specially set aside for *jihād* in the Way of God [even] for only one day is better than the world and what is therein.'

1. When the man's good deeds are weighed against the bad, these elements will help to increase the weight of his good deeds.

CHAPTER 13

ON THE LAW GOVERNING THE *JIHĀD*

I say, and success is from God: As to the law governing the *jihād*, it is an obligation on the people because of the word of God: 'Warfare is ordained for you'.[1] And the Prophet's saying as reported by Abū Dāwūd, '*Jihād* is incumbent on you with an *amīr*, whether dutiful or sinful'. Al-Nafrāwī said in his *Fawākih:* 'It devolves upon the person
33A of the Commander of the Faithful to undertake *jihād;* // if there be none, the obligation devolves upon the community of the Muslims.' According to the accepted opinion [of the majority of scholars][2] the obligation of *jihād* is a collective duty. Ibn Juzayy said in his *Qawānīn:* 'It is a collective duty according to the accepted opinion [of the majority of the scholars]. Ibn Ḥabīb said, "It is an individual duty." And al-Dāwūdī said, "It is an individual duty for everyone [whose territory] borders the [land of the] unbelievers." But when the borders of the country are defended and the frontier towns are guarded, the *jihād* ceases to be an obligation but remains a meritorious act. It becomes an individual duty under three conditions. The first is by order of the *imām*; whoever the *imām* nominates has to go to fight. The second is a sudden attack by the enemy on Muslim land; in that case the Muslims must repel them. If they cannot, those who are nearest to the enemy must repel them; if all fail, it becomes incumbent on all other Muslims [to fight] till the enemy is repulsed. The third is to retrieve Muslim captives from the hands of unbelievers.

It is stated in the *Mukhtaṣar:* '*Jihād,* [waged] on the side where [the enemy is] most active, [by means of expeditions undertaken] each year, even if one fears [Muslim] brigands, is, like the visit to the *Kaʿba*, a collective duty.' Commenting on this, Al-Kharashī
33B said, 'That means that the *jihād* is a // collective duty according to the prevailing [Mālikī][3] view; as long as some people undertake it, others are not obliged to, because of God's word: "God has preferred in rank those who struggle with their wealth and their lives over those who hold back; and to each God has promised good."[4] This [verse] indicates that though the address is in the plural it means each and every individual, and that if some carry out the obligation, it ceases to be binding on the community as a whole. If the obligation had been binding upon every individual, anyone who stayed at home for no sound reason, would have been disobedient.' Al-Shabrakhītī in his commentary on this point said: 'If it were asked why the Prophet was angry with the three persons who remained behind, though the *jihād* is a collective obligation, the answer is that the *jihād* was an individual duty for the *Anṣār* since they had made their pledge with the Messenger of God on that assumption, so their absence from that raid was a grave sin.[5] This was related by al-Suhaylī in his *Rawḍ* in relation to the tradition about the three men, on the authority of Ibn Baṭṭāl.'

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1. Qur'ān 2. v. 216.
2. *al-jumhūr=jumhūr al-'ulamā'* meaning the majority of scholars.
3. *'Ala 'l-mashhūr* means according to the prevailing opinion in the Mālikī school, while admitting that there are a few Mālikīs who hold a different point of view on the issue concerned. (Ibn Juzayy, *Qawānīn*, p.11).
4. Qur'ān 4, 95. 'To each God has promised good'—each of the two categories: those participating in a *jihād* and those who 'have an injury' as a result of which they hold back.
5. Ka'b b. Mālik, Murāra b. al-Rabī' and Hilāl b. Umayya were three Muslims from the *Anṣār* who failed to join in the raid of Tabūk after they had made their pledges with the Prophet to fight. On his return, the Prophet was angry with them but after they made excuses with oaths, he forgave them after the revelation of the Qur'ān 9, vv. 118–20. (See the *Sīra*, trans. A. Guillaume, p. 610; al-Suhaylī, *Rawḍ*, ii pp. 322–3).

CHAPTER 14

ON THE CONTINUING OBLIGATION OF *JIHĀD* UPON THE MUSLIM COMMUNITY AFTER [THE TIME OF] THE COMPANIONS

34A I say, // and success is from God: The obligation of *jihād* remains binding upon the Muslim community after [the time of] the Companions, on account of the word of God in the Chapter of the Cow: 'And fight them until persecution is no more, and religion is God's.'[1] And His word in the Chapter of the Spoils: 'And fight them until persecution is no more, and religion is all for God.'[2] Al-Suyūṭī in his *Takmila*, explaining God's word, 'Until persecution is no more' said: '[that means] until polytheism exists no more.' Al-Khāzin in his commentary reported Ibn ᶜAbbās as saying: 'It means until polytheism is no more.' Al-Khāzin also said with regard to God's word, 'And religion is all for God'; "that means until obedience and worship are entirely and purely for God to the exclusion of anything else."

Futher proof for the continuing obligation of *jihād* is God's word: 'So when you meet in battle those who disbelieve, then it is smiting of their necks until, when you have 34B routed them, // then tie fast their bonds; and afterward [set them free] either by grace or ransom, till war lay down its burdens'.[3] The commentators said: 'That means till war comes to an end and nobody except Muslims or those in covenant with Muslims are left, [in other words] until those being fought abandon their polytheism and sins, which is the ultimate end of the smiting, tying, grace and ransom which were mentioned; meaning that they are to be subjected to these measures until there is no war with the polytheists because their power has gone. It was also said that it means until the coming of Jesus.'[4] In Aḥmad's *Musnad* in the *ḥadith* about the Anti-Christ, it is mentioned: 'Then Jesus will descend... and will kill him [the Anti-Christ] until the trees and stones call out "O Spirit of God, this is a Jew," so he [Jesus] will kill all those who followed him [the Anti-Christ].' Bukhārī related in his *Ṣaḥiḥ* the following *ḥadith:* 'Mary's son [Jesus] will surely descend as an equitable ruler, he will break the cross, kill the pig and levy the *jizya*.' In Abū 35A Dāwūd // al-Ṭayālisī's recension [the *ḥadith* concludes], 'Until, in his day, all religions will have perished except Islam.'

Another proof for the continuing obligation of *jihād* is the Prophet's saying, '*Jihād* is continuous'—i.e. unceasing—'from the time God sent His Prophet; neither the injustice of the oppressor nor the justice of the equitable shall abrogate it.' And his saying as cited in the *Madkhal*: 'This religion shall remain steadfast, with a group of Muslims fighting for it, until the Hour comes.'

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1. Qur'ān 2, v. 193.
2. Qur'ān 8, v. 39.
3. Qur'ān 47, v.4.
4. This quotation is to be found in al-Bayḍāwī, *Anwār al-tanzīl*, p.508.

CHAPTER 15

ON THE DEFINITION OF THE *JIHĀD*

I say, and success is from God: As to the definition of the *jihād*, Ibn ᶜArafa said: 'It is the fighting of a Muslim against an unbeliever who has no covenant [with the Muslims], in order to make God's law supreme; or the presence of a Muslim with the intention of [taking part in a] *jihād* or his entering into the land [where a *jihād* is being undertaken].' Al-Kharashī said, [commenting on the words] 'to make God's law supreme': "This shows that whoever fights for the sake of booty or to show his bravery or the like cannot be considered a *mujāhid*;[1] so once that is known of him he is not entitled to his share of the booty, nor should he accept the booty when he realises that these are his motives."

I say that the basis of this definition is what is related in Bukhārī's *Ṣaḥiḥ*, according to

35B Abū Mūsā // al-Ashᶜarī who said, 'A man came to the Prophet and said, "One person [may] fight for booty, [another may] fight to gain fame, [a third may] fight to show off his bravery; which of these is in God's path?", The Prophet replied, "He who fights to make God's law supreme is the one who is in God's path." It is related in the *Madkhal:* 'If a man intends to fight for the sake of making God's law supreme, he will not be harmed afterwards by what he is possessed by during his fighting, whether that was anger, zeal or something similar; because all these are whisperings and inspirations of Satan and whims of minds that are not under control. God has excused us for that.'

I would say that aiming to get booty should not be counted against a man if he has fought to make God's law supreme, and this is in accordance with what the scholars have explained. For this reason al-Shabrakhītī commenting on the words, 'A martyr on the battlefield should not be washed' said: 'Know that martyrs are of three types: a martyr of the two worlds, a martyr of only this world and a martyr of only the next world.[2] As for the martyr of the two worlds, he is the one who has fought the unbelievers to make God's law supreme, whether the intention of obtaining booty accompanied that or not.

36A The martyr of only this world is // one who has fought only for the spoils or to vaunt his bravery or out of chauvinism, or to protect his wealth or his people, or to preserve his honour or the like. The martyr of only the next world is a person such as one who has been drowned or burnt [to death] or has died of an intestinal ailment.'

Moreover, according to al-Kharashī: '*Jihād* is of four types: a *jihād* of the heart, which is combatting Satan and driving away forbidden desires from one's self; a *jihād* by word which is enjoining the good and forbidding the evil; a *jihād* with the hand, which is waged by the *amirs* to check the evil-doers through beating and chastisement according to their

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1. *Mujāhid*—one participating in a *jihād*.

2. In the early stages of the *jihād*, it was not easy for the leaders to control the activities of the jihādists and maintain the strict code of discipline enjoined by Islamc Law. Bello writes that before the Shehu was appointed Commander of the Faithful, the *jamā'a* at Gudu made an unwarranted assault upon a Hausa community. The Shehu rebuked them and ordered the booty to be returned and the captives freed (*Infāq*. p.71). There is evidence in the same source of impious behaviour on the part of some of the jihādists such as showing disregard for religious books by throwing them on roads and in dirty places (*Infāq*, p.127). Of a more serious nature was the worldliness which the leaders of the *jihād* noticed among the jihādists after the initial enthusiasm for Islam.

discretion *(ijtihād)*. This type includes enforcing the prescribed penalties [of God]. And *jihād* with the sword, but when it [the term *jihād*] is used unrestrictedly it means only *jihād* with the sword.'[1]

1. In Arabic, certain words have two connotations, the unrestricted *(al-muṭlaq)* and the restricted *(al-muqayyad)*. When the word *jihād* is used unrestrictedly, it means *jihād* with the sword. When other types of *jihād* are meant, they must be qualified or restricted such as *jihād bi'l-qalb*—*jihād* of the heart, *jihād bi 'l-lisān*—*jihād* of the tongue by word of mouth and so on. Another example is the word *imāma* which occurs on p. 61 *Imāma* by itself *(muṭlaq)* means the caliphate and when restricted *(muqayyad)* it may mean leadership of a particular group or institution: e.g. of the mosque *(imāmat al-masjid)* or jurists *(imāmat al-fuqahā')* etc.

CHAPTER 16

ON THE CONDITIONS THAT MAKE *JIHĀD* OBLIGATORY

I say, and success is from God: Ibn Juzayy said in his *Qawānīn:* 'They are six:Islam, maturity, sanity, free-birth, male sex and bodily and financial ability.' As stated in the *Mukhtaṣar:* '[The obligation of fighting in a *jihād*] does not apply in [cases of] illness, 36B // childhood, madness, blindness, lameness, female sex, inability to support a dependent, slavery, a debt due to be repaid; a similar rule applies when parents [stop their sons from undertaking] a collective duty, such as [one which involves] going to sea or facing a danger, though a grandfather [cannot stop them]. The unbeliever is otherwise considered like a Muslim'[1]

It is mentioned in *al-Qawānīn:* '[The authority of] an unbelieving father is similar to that of a Muslim father in so far as [he can stop his sons from] journeys and adventures, but he cannot hold them back from a *jihād* because of his vested interest; another opinion is that he has an unrestricted right to prevent [them from such activities]'. It is stated in *al-Zaharāt:* 'Know that there are six conditions which make fighting in a *jihād* obligatory; it is not incumbent if the six of them are not all found together. If [even] one is not fulfilled the obligation ceases. These are Islam, maturity, sanity, free-birth, male sex, sound bodily health and sufficient wealth.'

1. This otherwise obscure phrase is elucidated by the following quotation from *al-Qawānīn*.

CHAPTER 17

ON THE PRECEPTS OF THE *JIHĀD*

I say, and success is from God: Ibn Juzayy said in his *Qawānīn*: 'They are six: intention,[1] obedience to the *imām*, avoiding cheating in the matter of booty, respecting pledges of protection, endurance against attack and avoidance of corruption. And there is no objection to a *jihād* under unjust *wālīs*.'

I say that *jihād* is obligatory even under such persons. It is stated in the *Mukhtaṣar* that [*jihād* is obligatory], 'even under an unjust *wālī*.' Al-Kharashī, explaining this said:

37A // 'It means *jihād* is an obligation even with a *wālī* who is unjust in his rule. [Such] a *wālī* is he who does not give the fifth (*khums*) to the appropriate persons nor does he abide by his promise. [To fight a *jihād* with such *wālīs*] is to commit the lesser of the two evils,[2] because to fight with them is to help them in their injustice whereas failing to fight with them is to fail Islam, and to stand up for the religion is an obligation. What is meant by *wālī* [here] is the commander of the army.' Al-Shabrakhītī with regard to the author's words, 'even with a wālī unjust to his subjects,' said: 'It means either to his subjects by oppressing them, or in the matter of booty by not giving the 'fifth' to the appropriate persons, for the Prophet said, "The *jihād* is continuous from the time God sent His Prophet; neither the injustice of the oppressor nor the justice of the equitable shall abrogate it." Abū Ayyūb al-Anṣārī fought with Yazīd b. Muᶜāwiya, after having desisted [for a time] then regretting it. Ibn ᶜAbbās was asked, "Should one fight with an *imām* who cares only for this world?" He answered, "You should fight for the sake of your share of the other world."' ᶜAbd al-Bāqī, commenting on the author's words, 'Even with an unjust *wālī*', said: 'It means the commander of the army who does not give the 'fifth' to the appropriate persons; [the idea] is to commit the lesser of the two evils because to raid with him is to help him

37B in his oppression // whereas not to raid with him is to fail Islam, and to stand up for the religion is an obligation. The same thing applies to one who is unjust in his judgements or one who commits major sins.' It is [also] mentioned in *al-Jāmiᶜ*: [Fight under an unjust *wālī*], 'even if he does not keep his promise; in this way one commits the lesser of the two evils which is an accepted rule and an established practice and is accepted by *ijmāᶜ*.' It is stated in the *Risāla*: 'Enemies should be fought under any *wālī*, just or unjust.'

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1. Intention (*niyya*) in Islam must precede every act of *'ibāda* such as prayer, pilgrimage, giving of alms, etc. A Muslim should audibly or mentally declare that he intends to perform such an act. However, the scholars have agreed only in the case of prayers that they are invalid without *niyya*. In the other acts of *'ibāda*, there is no unanimity among the scholars that failure to formulate the *niyya* renders the act invalid.
2. To commit the lesser of the two evils (*irtikāb akhaff al-ḍararayn*) is a famous maxim in Islam. One should commit the lesser evil in order to avoid a graver one. Dan Fodio used this formula to explain why he allowed women to attend his preaching. That women should appear in the presence of men was an evil, he argued, but by so doing he avoided the graver evil of leaving them without education (*'ilm*). See his *Nūr al-albāb*, *passim*.

CHAPTER 18

ON THE LAW CONCERNING FIGHTING IN THE 'SACRED MONTHS' WHICH ARE DHŪ 'L-QAᶜDA, DHŪ 'L-ḤIJJA, MUḤARRAM AND RAJAB

I say, and success is from God.: Fighting in these months was probited at the beginning of Islam according to the word of God: 'They question you [O Muḥammad] with regard to fighting in the sacred month. Say: "Fighting in it is a heinous [thing]."'[1] What is accepted [by the majority of scholars], as the commentators have said, is that the prohibition of fighting in these sacred months is abrogated by His word: 'Slay the idolators wherever you find them.'[2] Again: 'And wage // war on the idolators totally.'[3] "i.e. on all of them and in all months," as expounded by al-Suyūṭī in his *Takmila*. In al-Khāzin's commentary it is stated: 'The scholars advanced two different interpretations concerning the injunction contained in this verse. One is that the verse holds good and that it is not lawful to make a razzia during the sacred months unless one is attacked and fights back in defence. ᶜAṭā' is reported to have sworn by God that it was not lawful for people to raid in the sacred month unless they were attacked and that the verse had not been abrogated. The second interpretation, which is supported by the majority of scholars and which is the correct one, is that the verse was abrogated. Saᶜīd b. al-Musayyib and Sulaymān b. Yasār said, "Fighting is allowed in the sacred month and the [above] verse is abrogated by God's word, 'Slay the idolators wherever you find them,' and by His word, 'And wage war on the idolators totally',[4] i.e. whether in the sacred months or any other time"' Al-Khāzin also said in his commentary, with regard to God's word, 'And wage war on the idolators totally': "The scholars have differed on the prohibition of fighting in the sacred month. Some said that it was [originally] a major sin and forbidden, then it was abrogated by the word of God: 'And wage war on the idolators totally' // i.e. whether in the sacred months or otherwise. This was the point of view of Qatāda, ᶜAṭā' al-Khurāsānī, al-Zuhrī and Sufyān al-Thawrī who said, 'That is because the Prophet raided Hawāzin at al-Ḥunayn and Thaqīf at al-Ṭā'if and besieged them during the month of Shawwal and part of Dhu 'l-Qaᶜda.' Some other scholars said that the verse has not been abrogated."[5]

38A

38B

My view is that the point of disagreement arises when the unbelievers do not attack the Muslims in those months. But if they do, there is no disagreement over fighting back during the sacred months according to God's word: 'And whoso commits aggression

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1. Qur'ān 2, v. 217.
2. Qur'ān 9, v. 5.
3. Qur'ān 9, v. 36.
4. Qur'ān loc. cit.
5. Dan Fodio is of the opinion that the Qur'ānic verse prohibiting fighting in the sacred months has been abrogated. His second argument is that Muslims have to fight back in any month if they are attacked first. The *jihād* leaders justified their whole encounter with their enemies in terms of self-defence, so there was no observance of sacred months in the protracted campaigns between 1804–17 because they were fighting back. There is no mention in the whole of Sokoto literature that the jihādists refrained from fighting because of sacred months. To quote one example, it was in Muḥarram 1220/1805 that Birnin Kebbi was captured (*Infāq*, pp. 93, 94; *Tazyīn* p.62) having been fought over during the previous two sacred months (Dhū 'l-Qa'da and Dhū 'l-Ḥijja).

against you,' "i.e. by fighting in the sacred area [Mecca] or during *iḥrām*[1] or in the sacred month," as explained by al-Suyūṭī in his *Takmila*, 'Do you commit aggression against him in like manner as he has committed it against you'[2] Again, according to God's word: "The sacred month for the sacred month,"[3] 'for just as they fought you in it, do you fight them back in a like month, this being in answer to the veneration which the Muslims accorded to that month,' according to al-Suyūṭī in his *Takmila*.

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1. The three Arabic words used are: *ḥaram*=Mecca; *Iḥrām*=state of ritual consecration of pilgrims in Mecca (for an account of this, see Hitti, op. cit, pp. 133–4); the third word is *ḥarām*=sacred month
2. Qur'ān 2, v.194.
3. Qur'ān *loc. cit*.

CHAPTER 19

CONCERNING THOSE AGAINST WHOM A *JIHĀD* SHOULD BE UNDERTAKEN

I say, and success is from God: Those who should be fought in the path of God fall

39A into three categories: unbelievers either by birth or // apostasy, rebels and brigands. The distinction between fighting each of these categories will follow, if God wills. Ibn Juzayy said in his *Qawānīn:* 'They are three categories: the unbelievers, the rebels and the brigands. As to the unbelievers, all types of them [should be fought]. But all are in agreement that women, boys, hermits and decrepit old men should not be killed, except according to the Shāfiᶜīs, unless it is feared that they will be a source of danger or intrigues. The insane, the blind and those chronically ill should not be killed, though there is disagreement over [the case of the latter] two if they plan intrigues.'

It is stated in the *Mukhtaṣar* when mentioning those to be excluded [from being killed]: 'except women, unless they are engaged in fighting, boys, the insane, as well as decrepit old men, the chronically ill, the blind and monks secluded in a monastery or hermitage, provided they do not conspire; and [if they are not killed] only the bare minimum of provisions should be left for them. If they are killed the killer must ask God's forgiveness [and refrain from doing the same thing again] as is the case with [the person who kills] those who have not been previously summoned to Islam. If they are taken capitive [and then killed], their blood-wite [must be paid]. However, the monk and the nun may not be killed or enslaved.'

Al-Zaharāt states: 'All unbelievers should be killed except [those of] seven [categories]: women, boys, the mad, the decrepit old man, the chronically ill, the blind and the monk

39B secluded in a monastery or hermitage.' // As for a woman, she should not be killed unless she has been engaged in fighting. In this latter case, she is to be killed, as Ibn al-Qāsim said in the *Mawwāziyya* and the *ᶜUtbiyya*.[1] As for the boy two cases arise: the first is that in which there is no doubt as to his being young, in which case he is not to be killed. This apparently means [according to the scholars], even if he takes part in fighting. The other is when there is doubt [as to whether he is still only a boy]. The rule in this case is to remove his waist-wrapper to see if his pubic hair has grown, in which case [he is considered adult] like one who has already begun to use a razor. If so, he is to be killed. The adolescent is [treated] like a woman; if he has fought with a sword or the like, he is to be killed. If he has thrown stones he should not be killed, unless the stones cause death. As for the madman, if he is completely out of his mind he is not to be killed, but if he has periods of lucidity sometimes, he should be killed; this is the explicit meaning of what al-Lakhmī said. As to the decrepit old man, he should not be put to death unless it is discovered that he is one who has been planning and conspiring against the Muslims. The chronically ill such as the crippled, the lame and the paralyzed who do not plan or conspire are not

40A to be killed; similarly the blind, except when he plots and contrives against // the Muslims. Likewise is the monk retired in a monastery or hermitage except when he plans and conspires against the Muslims. Priests in churches should be killed without any exception. Mālik in the *ᶜUtbiyya*[2] included nuns [in this ruling] along with monks, saying that they

1. i.e. this was the view of Ibn al-Qāsim as transmitted in the teachings of Ibn al-Mawwāz (d.882) and al-'Utbī (d.869).
2. i.e. Mālik's view as given by al-'Utbī.

deserve it even more.'

My view is that the unbelievers of the Sūdān should be treated like the rest of unbelievers in all respects, as Aḥmād Bābā said in his *Kashf*. ᶜAbd al-Bāqi, in his commentary on the *Mukhtaṣar*, explaining the words of the author: 'It is permissable to fight the *Rūm* and the Turk' said, 'i.e. permission is given, and hence it is to be considered as obligatory. One copy [of the *Mukhtaṣar*] reads instead of *Rūm*, *Nūb*; meaning Ethiopia, though the *Nūb* are actually another people, which is correct as stated in al-Ḥaṭṭābī's commentary on the *Mukhtaṣar*.' Al-Tatā'ī said: "By his statement 'Rūm and Turk' the author was referring to the fact that the two *hadiths*: 'Leave the Ethiopians alone wherever they leave you and leave the Turks alone so long as they leave you alone' are not to be taken in their apparent meaning that it is obligatory to leave them alone and forbidden to fight them.

40B // But the prohibition [of fighting] implicit in them is simply a guide and does not contradict the permissibility [of fighting them]. For this reason it was said against this that to fight others at that time was more appropriate. Or [the other possibility is that] those traditions *(āthār)* were not considered as authentic by the *imām* [Mālik]. As regards the *Rūm*, no prohibition on fighting them was handed down so there is no point in taking trouble to refute it. They are the descendants of Rūm b. ᶜĪṣ b. Isḥāq b. Ibrāhīm, whom the people of this land call *Ifranj* [Europeans]. The *Turk* are a people to whom no Book was revealed. It should not be understood from his [Khalīl's] words that the permissibility of fighting is restricted to these two peoples as the commentator imagined, because it is not a restrictive condition and because it was only said about these two groups in view of their might. So others can be also fought in the case of their refusing Islam, as for example the weak unbelievers, such as the Copts and the Ethiopians because these peoples, due to their lowliness, tend to accept humiliation and abasement and Muslims

41A can generally feel secure from them.' //

Al-Kharashi and al-Shabrakhiti, having quoted this discourse said: "From this springs the statement of the commentator which amounts to saying that to fight other people such as the Copts and the Ethiopians is not lawful, while the accepted opinion is that it is permissible.'

CHAPTER 20

CONCERNING THOSE WHOSE HELP MAY BE CALLED UPON IN A *JIHĀD*

I say, and success is from God: Ibn Juzayy said in his *Qawānīn:* 'Free-born adult Muslims are the first to be called upon. A slave with the permission of his master may take part and so may strong adolescents. But unbelievers may not take part, contrary to the two schools [of al-Shāfiʿī and Abū Ḥanīfa]. Ibn Ḥabīb said: "That only applies to drawing up ranks and attacking, but there is no objection to seeking their help in demolition." He added: "There is no objection to making use of the help of those with whom peace has been made, against those who are being fought." '

It is mentioned in the *Mukhtaṣar:* 'It is forbidden to use poisoned arrows, nor should help be asked *(istiʿāna)* from a polytheist *(mushrik)* except to serve.' To explain the latter part of the statement, al-Kharashī said: 'It means that it is unlawful for us to seek the

41B help of an unbeliever in a *jihād* except by way of service in // digging, demolition, shooting with a catapult or the like. The letter *sīn* [in the word *istiʿāna*] indicates asking. What is forbidden is to *ask* help from them; but if anyone comes of his own accord, it is not unlawful to make use of his help. This is what has been related in Yaḥya's *Samāʿ* in opposition to Aṣbagh; and what is meant by *mushrik* is the infidel.'

Al-Shabrakhītī expounding the author's words 'And to seek help from an unbeliever' said: 'The letter *sīn* is for emphasis, so it is forbidden for us to accept his assistance. This agrees with Aṣbagh's opinion which he wrote in his *Ḥāshiya* and which conflicts with Yahya's *Samāʿ* in so far as what is forbidden is *seeking* their help, not *accepting* the help of one who comes of his own accord; and on this basis the letter *sīn* indicates *demand*. This agrees with the assumption on which al-Zurqānī interpreted the words of the author, and Ibn Rushd gave preference to this interpretation. He [al-Zurqānī] said in his commentary: "Leaving the letter *sīn* in its original sense [i.e. demand] agrees with the opinion of

42A the *Samāʿ* // which is supported by Ibn Rushd."

'What is related in the *Samāʿ* can be supported by what happened on the raid which Ṣafwān b. Umayya undertook with the Prophet at Ḥunayn and al-Ṭā'if.[1] As to Aṣbagh's opinion, it is supported by what is related by Muslim [in his *Ṣaḥīḥ*] that when the Prophet marched towards Badr, a man known for his boldness and courage overtook him at a place called Ḥarrat al-Wabra. The Companions of the Prophet rejoiced when they saw him. When he approached, the Prophet asked, "What brings you here?" He answered, "I came to be of service to you or to take my share with you." The Prophet said, "Do you believe in God and His Messenger?" He said, "No". The Prophet said, "Then go back, I will not have help from a polytheist." Then he came to the Prophet at [the place called] al-Shajar and the same dialogue took place again and the man went away. When he came the third time, the Prophet asked, him, "Do you believe in God and His Messenger?" He said, "Yes". The Prophet said, "Then join up."

'The inference to be drawn from the fact of Ṣafwān b. Umayya's fighting with the Prophet at Ḥunayn and al-Ṭā'if, is that he fought with the Prophet in both of them before he had become a Muslim. The question is whether the Prophet's silence concerning

1. He was present on both expeditions, though he had not yet become a Muslim. After the battle of al-Ṭā'if he received one hundred camels from the booty as part of the Prophet's policy of winning the hearts *(ta'līf al-qulūb)* of the leading unconverted Meccans. Ibn Hishām, *Sīra* ii, 440, 493.

42B Ṣafwān's help to them amounts to his having given him permission // to help them or not. This is the point of quoting Ṣafwān's fighting. It would have been more appropriate if the author had said "adherent of a revealed religion" *(kitābī)* instead of a "a polytheist" *(mushrik)* because this is the point upon which Mālik and Abū Ḥanīfā disagree. But as to the polytheist who does not believe in a revealed book, they both agree that he should not be called upon.'

ᶜAbd al-Bāqī said: 'Some scholars gave the answer that the prohibition was during a particular period, to wit, prior to [the battle of] Badr on account of the fact that Ṣafwān fought with the Prophet at Ḥunayn and al-Ṭā'if.' [1]

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1. Dan Fodio here supports the idea of accepting help, in a *jihād*, from the non-Muslim follower of a Scripture *(Kitābī)*. As for the pagan, no help should be sought from him or accepted when offered.

   In practice, the pagan Fulani fought on the side of the Muslims. It is established that many of the cattle Fulani and the Sullebawa were pagans (Last, *Sokoto Caliphate*, p. xxiv). Yet, like the rest of the Fulani, these two groups cast in their lot with Dan Fodio either by way of reprisal when harassed by Gobir forces or for ethnic considerations.

   It must be mentioned here that Dan Fodio failed to point out the fact that many Fulani in Hausaland were pagans. In 1803 *(Masā'il muhimma*, 10th problem), he reiterated Aḥmad Bābā's statement of some 200 years before that the Fulani were mostly Muslims except for a group beyond Jenne.

CHAPTER 21

ON THE LAW CONCERNING THE BEATING OF DRUMS IN A *JIHĀD* TO FRIGHTEN THE UNBELIEVERS

I say, and success is from God: It is permissible to beat drums in a *jihād* if the intention is to frighten the unbelievers and strengthen the Muslims. Ibn al-ᶜArabī said in his *Aḥkām*: 'The drum is of two types: the war-drum, to which there is no objection since it raises morale and overawes the enemy; and the wedding drum, such as the tambourine, which is allowed, if accompanied by decent words, avoiding obscenity and not leading women to uncover themselves before men.' It is stated in *Ḍiyā' al-khulafā'*: 'If they go forth, let

43A them beat the drum since it raises morale // and overawes the enemy.'

My view is that a drum should be beaten only for some lawful purpose, such as calling a meeting, announcing when an army departs, or pitches camp or returns home and the like. For anything which is not a *sunna* should be restricted to what necessity calls for, as, for example the drum which was beaten on the arrival of a caravan belonging to Diḥya. It is related in al-Maḥallī's commentary: 'The Prophet was delivering the Friday sermon when a caravan arrived, so the drum was beaten [to announce this] according to custom. The people went out of the mosque except for twelve men, so it was revealed: "But when they see some merchandise or diversion they break away to it"[1] i.e. to the merchandise because this was what they were looking for, not the diversion'.

See how He called beating the drum diversion in spite of the fact that it was being beaten for a legitimate purpose because it was not in itself essential. How [much worse] then, is what the ignorant people do—playing musical instruments for entertainment and singing! It cannot be disputed that this [forms part of what] is wrong, and is not of that which is right, and what is there beyond that which is right save error? It is related in the *Madkhal* that Ibn al-Qāsim said, 'I asked Mālik about singing. He replied, "God has said: 'What is there, beyond that which is right *(al-ḥaqq)* save error?'[2] Is it [singing] right?"' It

43B is stated in *al-Miᶜyār:* 'Among the things // a ruler should forbid among his subjects are musical instruments for entertainment.' Again a little further on: 'Singing is not allowed under any circumstance whether at a wedding or otherwise. ᶜUmar b. ᶜAbd al-ᶜAzīz wrote to the provinces forbidding all [kinds] of [musical] entertainment except the [use of the] tambourine alone at weddings. Yaḥyā said: "I am also of this opinion."'.

1. Qur'ān 62, v.11.
2. Qur'ān, 10, v. 32.

CHAPTER 22

ON THE LAW CONCERNING THE WEARING OF SILK IN A *JIHĀD*

I say, and success is from God: The wearing of silk, for men, is forbidden—nay, it is a grave sin. Shihāb al-Dīn Aḥmad b. Ḥajar al-Haytamī said in his *Kitāb al-zawājir ᶜan iqtirāf al-kabā'ir:* 'The one hundred and seventh[1] grave sin is that a male or a hermaphrodite should wear pure silk. The two *Shaykhs* [al-Bukhārī and Muslim] and others related, on the authority of ᶜUmar, that the Messenger said, "Do not wear silk, for whosoever wears it in this world shall not wear it in the hereafter." The two *Shaykhs* and others also related [the following *ḥadīth*]: "Only a worthless fellow wears silk." Again, it is related by Abū Dāwūd and al-Nasā'ī on the authority of ᶜAlī, who reported that he had seen the Messenger take a piece of silk in his right hand and a piece of gold in his left

44A hand and // say, "Verily, these two are forbidden to the males of my community." Again, related by al-Bukhārī and Abū Dāwūd, "There will certainly be among my community people who consider [the wearing of] silk to be lawful; they will be transformed into monkeys and pigs until the Day of Resurrection." Then he [al-Haytamī] added, 'Warning: wearing of silk is a major sin: that is the clear inference to be drawn from the above sound *ḥadīths* on account of the strong threats contained in them.... But the majority of our *imāms* consider it to be merely a venial sin. Perhaps this is because they consider a grave sin to be one which calls for a prescribed penalty, and it has been shown above that the correct [ruling] is the opposite of that. The inevitable verdict, when you consider only those *ḥadīths*, with their strongly worded threats, is that it is a major sin. Among those who favoured this [last] interpretation was al-Jalāl al-Balqīnī and others and the *Imām al-Ḥaramayn* [al-Juwaynī] inclined towards this judgement.'

All that is [when silk is worn on occasions] other than in a *jihād*. But wearing it in a *jihād* is also forbidden, according to the accepted opinion. ᶜAbd al-Bāqī, when expounding in his commentary the words of the *Mukhtaṣar*: 'In wearing silk [during prayer], a man is disobedient, [but his prayer] is valid' said: "To wear silk because of being afflicted by the itch or to wear it in a *jihād* is forbidden according to the accepted opinion, because

44B this is the opinion of Ibn // al-Qāsim who transmitted it from Mālik, in opposition to Ibn Ḥabīb concerning the former and in opposition to Ibn al-Mājishūn concerning the latter, for he argued that it makes a man feel proud of himself and overawes the enemy in battle and protects one from being shot by arrows and the like when not carrying arms. Some Companions and some of their successors permitted the wearing of it during a *jihād*. ᶜAbd al-Ḥakam allowed it and Ibn Shaᶜbān related its permissability on the authority of Mālik through the transmission of ᶜĪsā who had heard it from Ibn al-Qāsim. Ibn al-Jallāb went no further than to consider both of them [wearing silk because of being afflicted by the itch and in a *jihād*] permissible—and this is a weak opinion."

Ibn al-ᶜArabī said in his *Aḥkām:* 'There are nine opinions with regard to the [wearing of] silk. The first is that it is forbidden to men under any circumstance. The second is that it is forbidden except in war. The third is that it is forbidden except when travelling. The fourth allows it only during an illness such as the itch. The fifth allows it only in a razzia. The sixth makes it permissible under any circumstance. The seventh is that it is

1. In the work as published (Cairo, 1357 A.H., i, p.124), it is listed as the 105th grave sin.

forbidden except when it is used for making an ornamental border for cloth (ᶜ*alam*).[1] The eighth makes it forbidden for men and women. The ninth is that it is forbidden to wear it, but not to spread it [on a bed].'

My view is that of all these views the one which is reliable and generally accepted is that it is forbidden for men to wear pure silk even in a *jihād*, or to cover themselves with it or use it as a saddle cloth or to sit upon it even with something over it, according to al-Māzarī and ᶜIyāḍ, // except when shared with one's wife. It is reported in *al-Zaharāt*: 'The men of former days and the scholars disagreed on the wearing of silk. Some said it was forbidden to men and women, some said it was objectionable for them to wear it and others permitted them to use it. The correct opinion is that of the Māliki school of law and the majority of the scholars—that it is permissible to women and forbidden to men.'

45A

Ibn Juzayy said in his *Qawānin*: 'As far as men are concerned, silk and gold are completely forbidden. Ibn al-Qāsim allowed it to be used for making a flag (*rāya*)'.

All this concerns wearing silk cloth and gold, but all other types of cloth are allowed. Aḥmad al-Zarrūq in his commentary on *al-Waghlisiyya* said: 'It is desirable for a scholar, as well as a pupil, to adorn himself particularly with white clothes,[though] without prejudice to the wearing of other colours. The Prophet used to wear green, red, black and yellow, though not blue and nothing has been transmitted to approve or disapprove it.'

All this is applicable when the dress is not one peculiar to the unbelievers, such as the girdle (*zunnār*) which is prohibited—nay, wearing it [amounts] to unbelief according to the explicit meaning of the words of // Khalīl in the *Mukhtaṣar*. Abū ᶜAbdullāh b. Marzūq commenting on [the phrase in the *Mukhtaṣar*] 'and to put on a girdle' said: 'The explicit meaning of the author's words is that merely to put on a girdle entails unbelief; and the explicit meaning of what is said in [ᶜIyāḍ's] *Shifā'* is that [it is unbelief] if it entails going to church as well. What is in the *Shifā'* is more appropriate... for the significance of this act [putting on a girdle] as an indication of unbelief is weak because of the possibility of choosing this dress for a reason other than unbelief. Therefore there has to be another proof alongside it.' Al-Kharashī said with regard to the words 'fastening a girdle'; "Of similar significance is to deck one's self out in the fashion of the unbeliever in any way, but there must also be some other proof such as going to church. A further restriction is that the action has to take place in a Muslim land."

45B

It is explained in *Nasim al-riyāḍ* [in explanation] of the words of the author: 'And dressing in their fashion [*ziyy*]'; "it means adorning oneself with their ornaments and dressing in their fashion. *Ziyy* is the appearance including clothes and the like and *zanānir* is the plural of *zunnār*, which is a girdle the Christians tie round their waists. It is peculiar to them and it was imposed upon them to distinguish them from the Muslims. // That was a common practice in the early days [of Islam] so it has become distasteful to wear an unbeliever's dress either in the abode of war or elsewhere. So if a man does that with the intention of showing favour to their religion or inclining to it or showing indifference towards Islam, he commits unbelief; otherwise he does not."

46A

1. The Arabic word, 'ᶜ*alam* means, 'flag' or 'an ornamental border on cloth'. The latter sense is meant here.

CHAPTER 23

ON THE LAW OF EMBELLISHING FIGHTING WEAPONS WITH GOLD AND SILVER IN A *JIHĀD*

I say, and success is from God: The embellishment of fighting weapons, other than the sword, with gold and silver is prohibited according to the generally accepted opinion of the [Mālikī] *madhhab*, even in a *jihād*. It is stated in the *Mukhtaṣar*: 'It is forbidden for an adult male to use anything embellished, even a belt or a fighting weapon.' Regarding this, al-Kharashī said: 'i.e. it is forbidden to embellish a belt or a fighting weapon, according to the generally accepted opinion, whether they are things used for protection, such as a shield, or for striking with, such as a spear or a knife, or used in riding, such as a saddle or a stirrup, or in controlling a horse, such as a bit.' Concerning the words [of the *Mukhtaṣar*]: 'except the *Qur'ān* and a sword,' he said: 'It means that it is lawful to use a sword adorned with gold and silver, whether the adorned part is attached to the sword, such as its handle, or detached, such as its sheath, because a tradition has been transmitted permitting it—not because of its being the main weapon of war.' It is stated in *al-Jāmiᶜ*, expounding these words: 'It is permitted // to adorn the sword with gold and silver to overawe the unbelievers.' Ibn Juzayy, said in his *Qawānīn*, discussing the permitted adornments: 'Women are allowed to use adornments without any restriction, but as regards men, only the adornment of the sword with silver is allowed, by general agreement *(ittifāqan)*; but the permissibility of adorning it with gold is questionable; it is also questionable whether or not other weapons of war fall into the same category as the sword [as regards adornment]'. It is reported in Bukhārī's *Ṣaḥīḥ* in the chapter on adorning swords, on the authority of Abū Umāma: 'The conquests were made by people the adornment of whose swords was neither gold nor silver; their only adornment was sinews *(al-ᶜalābī)*, lead *(ānuk)* and iron.' Al-Qasṭallānī said in his *Irshād*, explaining these words: 'It does not follow from the fact that their adornment was as described, that other [methods of adornment] are not allowed. Men may adorn with silver, swords or any other fighting weapon, such as spears, arrow-heads, chain-mail, belts and *rānin*—spelt with an undotted *rā'* and *nūn*, meaning gaiters for covering the shins having no foot-part but only extending between the knees and the ankles; likewise boots [may be adorned] because this enrages the unbelievers. However, none of the above-mentioned things may be adorned with gold.'

46B

47A

To sum up: // it has already been mentioned that a sword may be adorned with gold according to the general belief of our *madhhab*.[1] There are two opinions, viz: prohibition and permissibility, about including the rest of fighting weapons [in this ruling], but the accepted one is that it is forbidden.

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1. i.e. the *Mālikī* School of Law.

CHAPTER 24

ON THE LAW CONCERNING THE TYING OF BELLS AND CORDS[1] TO THE NECKS OF BEASTS OF BURDEN IN A *JIHĀD*

I say, and success is from God: Be it known that to tie bells and cords to the necks of beasts of burden is objectionable. Khalīl b. Isḥāq said in his *Jāmiᶜ*: 'To tie bells and cords to the necks of beasts of burden is disapproved of.' Ibn Juzayy said in his *Qawānīn*: 'It is not allowed to fasten cords to the necks of beasts of burden nor to tie bells to them, because that is forbidden by the Sunna. [What is meant by this] is large clappers but not smal. ones, for as the bells get bigger they look more like the *nāqūs*.[2] It is also said that [the prohibition is due to the fact that] it tells the enemy of our whereabouts so that he can search out if pursuing, or get away if he is in retreat.' It is mentioned in Bukhārī's *Ṣaḥīḥ* in the chapter on what had been said about the bell and the like, on the authority of ᶜAbdullāh b. Abi Bakr from ᶜAbbād b. Tamim, that Abū Bashir al-Anṣārī informed him that he had been with the Messenger of God on one of his journeys; ᶜAbdullāh thought that Abū Bashir added, 'While the people were encamped at night.' The Messenger of

47B God sent // a man [to announce]: 'Any collar or collar made of cord round the neck of a camel should be cut.' Al-Qasṭallānī said in his *Irshād* with regard to this: 'This is how [it was transmitted] with the word "or" to indicate doubt[3] or to specify [what may be tied]. The prohibition is absolute and the conformity *(muṭābaqa)*[4] is drawn from the fact that a bell cannot be tied to a camel's neck without a strap which would be a cord or the like. So the compiler mentioned the bell which has to be tied by a strap. Since the prohibition was made against tying straps round the necks of camels, that necessarily included a prohibition against bells themselves. The point is the prohibition of [the use of] bells;

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1. See above, p. 46, n. 1.
2. The *nāqūs* is a wooden board which served as 'bell' among the Eastern Christians. See Gustave E. Von Grunebaum, *Medieval Islam* (Chicago, 1961) p. 179.
3. That means 'Abdullāh was not sure whether Abū Bashir al-Anṣārī had said only 'any collar' or 'any collar made of cord'. This is what is meant by indicating doubt. See al-Nawawi *Sharḥ, Ṣaḥīḥ Muslim*, iv, p. 95.
4. Al-Qasṭallānī explains here why al-Bukhārī has included this *ḥadīth* in the section dealing with bells [illegible] round the necks of camels since the *ḥadīth* deals with cords only. The *muṭābaqa*, or how the cord can be [illegible]tioned together with the bell, is that the latter is tied by the former.

CHAPTER 25

ON THE LAW CONCERNING THE GIVING OF THE STANDARD TO THE COMMANDER IN-CHIEF IN A *JIHĀD*

I say, and success is from God: To give the standard to the Commander-in-Chief in a *jihād* is sanctioned by the Sunna because the Prophet used to do that, as is related in Bukhārī's *Ṣaḥīḥ*, on the authority of Abū Sahl b. Saᶜd, who reported the Messenger of God as saying, "I am going to give the standard, tommorrow morning, to a man at whose hands God will give victory." The fighters spent their night excitedly prattling about whom it would be given to. Early the following morning, they all hurried to the Messenger of God each hoping to be given the standard. The Messenger of God asked, "Where is ᶜAlī b. Abī Ṭālib?" They answered, "He is suffering from an eye complaint, O Messenger

48A of God." He said, "Send // for him." He was summoned and the Messenger of God spat in his eyes and prayed for him so that he recovered completely as though he had had no pain. Then the Messenger of God gave him the standard." Again, in Bukhārī's *Ṣaḥīḥ*, Salama b. al-Akwaᶜ is reported as saying, 'ᶜAli stayed behind when the Prophet went to the battle of Khaybar as he had an inflamation of the eyes. Then ᶜAlī said, "Shall I stay behind [when] the Messenger of God [goes forth]?" So he went forth and caught up with the Prophet. In the evening prior to the morning when Khaybar was conquered, the Messenger of God said, "I am going to give the standard to," or "tomorrow there will take" [the standard], "a man whom God and His Messenger love," or he said, "a man who loves God and His Messenger," "at whose hand God will give victory." And lo! there was ᶜAlī while we were hoping he would not arrive. They said, "Here is ᶜAlī." So the Messenger of God gave him [the standard] and God gave us victory.'[1] Again Nāfiᶜ b. Jubayr was reported in Bukhārī's *Ṣaḥīḥ* as saying, 'I heard al-ᶜAbbās say to al-Zubayr, "Was it here that the Messenger of God ordered you to hoist the standard?" He said, "Yes".'

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1. It can be inferred that this chapter was meant to support the Shehu's tendency towards making his son Bello his deputy, as the Prophet made ᶜAlī, his nearest of kin, his Commander-in-Chief. For a full discussion, see Introduction, p. 28.

CHAPTER 26

ON THE LAW CONCERNING INVITING THE UNBELEVERS TO ISLAM BEFORE FIGHTING [THEM]

I say, and success is from God: It is obligatory to invite the unbelievers to Islam before fighting [them]. It is related in Bukhāri's *Ṣaḥiḥ* that the Prophet,// when he gave the standard to ᶜAlī on the day of Khaybar, was asked by ᶜAli, 'O Messenger of God, shall I fight till they become [Muslims] like ourselves?' The Prophet replied, 'Go forth, at your leisure until you reach their *sāḥa*.[1] Then invite them to Islam and tell them what their duty is towards God; for by God, that He should guide, through you, a single man, is better for you than possessing the choicest camels of a herd.' It is stated in the *Mukhtaṣar*: 'Invite them to Islam; then [if they refuse, they must pay] *jizya*.' Explaining this, ᶜAbd al-Bāqī said in his commentary: 'Whether the invitation reaches them or not.' Ibn Juzayy said in his *Qawānīn:* 'Invitation to Islam before fighting is only for those whom the call to Islam has not previously reached. They should be invited to it first. If they accept, they are to be spared; if they refuse, the alternative of *jizya* is to be offered. If they refuse this, then they are to be fought. But as regards those to whom the call to Islam has already come, they should not be summoned [again] and the most unexpected time should be sought [in which to attack them].'

48B

It is stated in *al-Zaharāt:* 'The scholars of the (Māliki) *madhhab* differed on whether or not invitation must precede fighting. Some of them maintained that the [Māliki] *madhhab* acknowledges three opinions: (1) that it is obligatory [to invite prior to fighting] (2) that it is not obligatory (3) that it is only obligatory in respect of those who dwell far away. Some added a fourth, which is [that it is obligatory] if the Muslim army is large and confident of itself; if it is not, there should be no invitation. // The invitation is that they should first be asked to accept Islam. If they agree, that settles it. If they do not agree, they should be invited to pay *jizya*. If they accept [this], they should not be fought; if they refuse *jizya*, they should be fought. Al-Lakhmi said: "It is agreed that it is an obligation to [first] invite those whom the call has not already reached. And for those whom the call has reached, there are four views [about summoning them for the second time]; (1) it is obligatory, (2) praiseworthy, (3) allowed, and (4) disallowed. The 'obligatory' is when we deem it certain that they will accept if invited and when the unbelievers' army cannot stand up to that of the Muslims. The 'praiseworthy' is when it is doubtful whether they will accept or not. The 'allowed' is when it is believed that they will not accept. The 'disallowed' is when the Muslims are small in number and the invitation might incur danger to them, but there is no disagreement about abandoning the invitation if they launch a sudden attack on us." Al-Kharashī said: 'The invitation is when we are not attacked first; if they do, they should be fought without invitation, for giving an invitation is forbidden in that case.'

49A

Al-Zaharāt states: 'If they are invited to Islam and they accept, they are not to be fought, according to what has been handed down by tradition, though the explicit meaning of what the *Risāla* states, is that one must [only] stop fighting them when they become Muslims in deed or when they pay the *jizya*; mere [verbal] acceptance of Islam should not be considered sufficient grounds for giving up fighting them' //

49B

1. *Sāḥa* means 'courtyard', 'open space', but the meaning of the whole phrase here is 'until you come in contact with them.'

CHAPTER 27

ON THE LAW CONCERNING THE ACCEPTANCE OF THE UNBELIEVERS' PROFESSION OF ISLAM AND THE LAW OF TAKING *JIZYA* FROM THEM, IF THEY ARE IN A PLACE WHERE [MUSLIMS] CAN BE SAFE FROM THEIR INTRIGUES

I say, and success is from God: Al-Kharashī in his commentary, expounding the words of the *Mukhtaṣar*: 'They are to be summoned to Islam, then, [if they refuse, the alternative of] *jizya* [is to be offered when Muslims are] in a place safe from their intrigues', said: "In a safe place" goes with "summoned" or with "Islam, then *jizya*"; that is to say, they should only be summoned when [Muslims] are in a place secure [from their intrigue] and they should not be spared if they respond favourably to Islam or accept *jizya* unless they are in a place where [Muslims] can be safe from their intrigues.'[1] ᶜAbd al-Bāqī said with regard to this: 'It may be that [in a safe place] goes with "summoned" or with *"jizya"* or with both of them, as al-Tatā'ī said. But if they do not accept to pay *jizya* or, if they do accept to pay, yet they are in a place beyond our jurisdiction and do not move to our land, or if it is feared to summon them to Islam or *jizya* lest they should rush to attack us, they should be fought without delay'. Al-Shabrakhītī said with regard to this: '[In a safe place] goes with "summoned" or with "Islam" and with *"jizya"*, i.e. they should not be invited except [when Muslims are] in a secure place, otherwise there should be no invitation nor should they be spared even if they respond favourably // to Islam or accept to pay *jizya* except if they be in a place where [Muslims] can be safe from their intrigues.' 50A

All this concerns *jizya* exacted under compulsion (*al-jizyat al-ᶜanwiyya*.) As to *jizya* paid by agreement (*al-ṣulḥiyya*), it is not subject to the same conditions. It is stated in *al-Jāmiᶜ*, a commentary on the *Mukhtaṣar*, explaining the above phrase: 'i.e. they are to be summoned to Islam in a secure place, but not in a place which is not secure. It is probable that "then *jizya*" means the alternative is to be offered when they are in a secure place and otherwise there should be no offer of *jizya*. It is [also] possible that [in a secure place] refers to them both ["Islam" and *"jizya"*]'.

Al-Zaharāt states: 'The words of the author of the *Mukhtaṣar* "in a secure place" mean that the unbelievers have to be in a secure place; the meaning of its being secure is that they are under our jurisdiction in it, whether that place is distant or close by, as stated in the *Jawāhir* and the *Risāla*.'

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1. At the outset of the *jihād*, (1804–1806), the Muslims were not in a position of strength to dictate terms. Their position was further complicated by uncertainty and unpredictability of the loyalty or sincerity of certain groups. Their experience in Gobir, Kebbi and Zamfara, which places were eqivocal, after the initial conquest, pointedly illustrates the difficulty of applying the Islamic law in relation to non-Muslims. However, details of the vulnerability of the Muslim strategy are yet to be studied.

CHAPTER 28

ON THE ART OF MILITARY MANOEUVRES AND TACTICS IN A *JIHĀD*

I say, and success is from God: Be it known that, as stated in *Diyā' al-khulafā'*, people have written books on military tactics and established rules for them which may not be relevant to [conditions in] all countries. For generally speaking, each nation has its own particular type of manoeuvre, tactic and stratagem and its own method of engaging, 50B advancing and retreating. But we will discuss those of its aspects // which it is scarcely disputed that they are the principles of wars. We shall begin with the word of God in His mighty Book: 'Make ready for them all you can of [armed] force and of horses tethered, that thereby you may dismay the enemy of God and your enemy'.[1] The words 'all you can of [armed] force' cover the entire potentiality of mankind for preparing, equipping and planning. But the Prophet interpreted them as meaning archery. When he passed by some soldiers shooting arrows, he said, 'Verily, force is in archery,' and repeated it three times. Ibn al-ᶜArabi said in his *Aḥkām:* 'I have witnessed fighting many times but I saw no weapon more effective than the arrow nor any which was quicker in producing results'.[2]

And know that God has summed up the rules of conduct in war by His word: 'O believers, whensoever you encounter a host, then stand firm and remember God frequently that you may be successful. And obey God and His Messenger and dispute not with one another lest you should fail and your power depart; and be patient, surely God is with the patient,'.[3] Again: 'O believers, if you help God, He will help you, and make your foothold firm'.[4] The causes of victory and defeat and the fact that fleeing is the outcome of sins are clear from His word: 'Those of you who turned away the day the two hosts 51A // encountered each other, Satan alone it was who caused them to backslide, because of some of that which they have earned'.[5]

The Prophet said, 'War is a matter of trickery.' It is prudent on the part of the king not to underestimate his enemy, though he be lowly; nor to be heedless of him however insignificant he might be. In other words, the enemy is like a fire. If you get to it when it is starting, it is easy to put out; but if you ignore it till the blaze has got a firm hold, it is difficult to extinguish.

Some Companions used not to cut their nails when they intended to go on a raid. The first thing a man should do when going to battle is to perform some good act beforehand such as giving alms, fasting, redressing an injustice he has done, doing a favour to his kin, uttering a sincere prayer or enjoining good and forbidding evil or the like. ᶜUmar b. al-Khaṭṭāb used to enjoin that, saying, 'Indeed you only fight with your deeds.' It is narrated that once a mail-carrier *(barīd)* came to him with the [tidings] of a Muslim victory

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1. Qur'ān 8,v.60.
2. In *Dhū 'l-Qa'da*, 1227/November 1812, Dan Fodio enumerated in the introduction to his *Najm al-ikhwān* the items of equipment which had been used in his *jihād*. They were horses, bows and arrows, spears, shields and chains, girdles, helmets and banners. Fire-arms, however, were distrusted and were not used in the *jihād*. As late as the time when Barth visited the empire (1853–4) fire-arms were not used by the army of Sokoto although some pistols were kept by the *imām*. For further discussion see Last, *Sokoto Caliphate*, pp.72–3.
3. Qur'ān 8, vv. 45–6.
4. Qur'ān 47,v.7.
5. Qur'ān 3, v. 155.

and ᶜUmar asked him, 'At what time did you encounter the enemy?' He said, 'In the early morning.' He said, 'At what time were they defeated?' He said, 'Shortly after mid-day'. ᶜUmar remarked, 'We belong to God and to Him we shall return! Did unbelief stand up to faith from early morning till noon? You have innovated something behind my back' or he said, 'something has been innovated behind your back.' // So the whole matter depends on selecting the most capable leaders and making a careful choice of commanders and flag-bearers. Nobody should lead an army other than a courageous man, self-possessed, truly intrepid; a man who has [fought] in the middle of battles, experienced in handling men and has been [equally] tested by them; a man who has combatted his equals and surpassed the heroes. So if he is such a man and all went forth under his command, that is to say, if all the others were like him, then if it comes to the clashing of the squadrons [he wins the day] otherwise he brings the sheep back [safely] to the enclosure *(zariba)*.[1]

51B

Wise men are agreed that war is a matter of trickery. The first step is for the commander to send his spies to the enemies' soldiers to gather information about the enemy and to enquire about their chiefs, leaders and brave men and to find out about their plans.[2] He will make fine promises to them and make them more and more covetous of acquiring the fine gifts he has.[3] He will say to every man with him, 'When you intend to fight do not get into the thick of the battle, even if you are confident of you power, before you can see the way out of it, for one is strongest when there is a way-out and weakest when despairing of it.' It is prudent to place the most stout-hearted of your men and the fully armed heroes in the centre, for no matter how the flanks might break, people's eyes remain fixed on // the centre and so long as its flags fly and its war-drums beat, it remains for those on the flanks a stronghold in which any defeated man may take refuge. If the centre breaks, the flanks will fall apart but the breaking of the flanks does no harm so long as the centre remains firm in which case the fleeing man will return to it, for rarely has an army achieved victory after its centre has broken up. One of the most important things is to choose valiant men [for the centre], so select those known for their intrepidness and do not worry if they are not numerous. Remember what the poet said:

52A

And a thousand of their men are like one
And one is like a thousand if a calamity falls.[4]

It is essential for the leader of the army, when he reaches the battlefield, to conceal any mark by which he has become known because his enemy will have got to know of his stratagem, the colour of his horse and his beast of burden. He must not keep to his tent day and night and must change his garments and his tent and let his position be undetected lest his enemy should take him unawares. When fighting stops, he should not walk about with a small group of his men away from the main body of his soldiers because enemy spies will be hunting for him. It was in this way that the Muslims routed the forces

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1. i.e. leads his men safely back home. The phrase is proverbial in Arabic.
2. While we are not in a position to say that the jihādists had an organised system of secret agents, there is enough evidence to show that their leaders were well informed of the plans of their enemies. On the eve of the battle of Tsuntsua (Dec. 1804) and at a time when the Tuareg had promised support for the *Jihād* army, a certain Aḥmad b. Ḥaydara, a Tuareg, himself warned the jihādists that his tribe were intriguing with Gobir against them (*Infāq* pp. 87, 90). In *Sard al-kalām*, too, Muḥammad Bello mentions that he discovered numerous abortive schemes ʿAbd al-Salām had devised with the enemies to overthrow the Caliphate (see pp. 2,4).
3. It is not clear from the text who is to be given the gifts. But al-Ṭurṭūshi in his *Sirāj al-mulūk* (p.300), says that these gifts are to be given to men in the enemies' camps.
4. The verses are by Ibn Durayd, a Jāhili poet.

of Ifriqiya when they conquered it. This occurred after fighting had abated at mid-day and the commander of the enemy came walking outside the camp. The news came to ʿAbdullāh b. Abī 'l-Sarḥ, so he went out with a number of his trusted men, charged the enemy and killed the king; and victory was thus achieved.[1]

52B As regards the manner of battle formation, the best // arrangement is to arm the men with full shields *(diraq)*, long spears and sharp barbed javelins, then they should fall into ranks and hold fast to their posts, their spears [fixed] in the ground, each man planting his left knee in the ground and placing his shield upright in front of him. Behind them are the best archers whose arrows tear chain-mail to shreds. The cavalry are positioned behind the archers. So when the unbelievers launch an assault on the Muslims, the infantry will hold fast to their formation and no man will stand up on his feet. When the enemy approaches, the archers will rain their arrows on them and the infantry will hurl their javelins and spears at them. They will then disperse right and left while the Muslims' cavalry go forth and kill from them whomsoever God wills.[2]

The first rule of victory is to keep together, for dispersal is the beginning of defeat. To hear and obey is the basis of the united group. A writer [once] said, 'Much *takbīr*[3] during battle causes failure; so lower your voices, and keep calm, conceal cowardice, and call to mind your rancour because it urges you on. Be always obedient, for obedience is the stronghold of the fighter. When battle takes place, fate shows its face. Often a plot is more effective than bravery and a word has often defeated an army. Patience is the cause of
53A victory. Victory comes from patience; // there is no victory with injustice. Do not be cowardly in battle and do not mutilate when you have the upper hand. Do not go too far when you are victorious and do not defraud when collecting booty. And make *jihād* free from worldly motives'.[4]

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1. This is a reference to the battle of Sbaitla in Tunisia in which Ibn Abī 'l-Sarḥ defeated the Byzantine Patriarch (viceroy) Gregory in 647 A.D. (See Ch.-A. Julien, *Histoire de l'Afrique du Nord* (Paris 1956, ii,p.14).
2. Muhammad Bello (*Infāq*, p.88) gives a vivid description of the formation of the jihādists when encountering the enemy. A vanguard of about two hundred cavalry would advance, followed by a regiment of valiant infantry under a commander. The body of the infantry would be in the centre together with the flag-bearers. The rest of the cavalry would be on the left and the right flanks, under a commander. Behind the army there would be also a section of the cavalry.
3. See below, p. 101 n. 3.
4. It is generally accepted that the Shehu did not take part in fighting and that he did not lead an army. Nevertheless, he was always at the centre acting in a manner similar to a Commander-in-Chief. In making truce and giving *amān*, he gave the last word; moreover he was the effective commander in drawing the general plan of movements. To take a few examples: (*Infāq* pp.98, 99), 'When we stopped at Kebbi, the Shehu raised an army to conquer Alkalawa', 'When our men required help, the Shehu ordered me [Bello] to march out'. 'The Shehu ordered the Commander 'Alī Jedo to go out against 'Funkum' but not the Tuareg' etc. Nevertheless, there was enough consultation among the chiefs before campaigns (*Infāq* p. 99) and it seems that the commander of the expedition was in a position to use his own discretion once he was out fighting, as the history of campaigns in the *Infāq* and *Tazyīn* shows.

CHAPTER 29

ON THE LAW CONCERNING BOASTING AT THE TIME OF SHOOTING ARROWS, RECITING *RAJAZ* POETRY, DECLAIMING ONE'S GENEALOGY (*TASMIYA*[1]) AND SHOUTING IN A *JIHĀD*

I say, and success is from God: All the things mentioned here are permissible. It is stated in the *Mukhtaṣar* at the end of the chapter on racing: 'Everything else is allowed [provided no betting is involved]; boasting at the time of shooting, *rajaz*, *tasmiya* and shouting [are also allowed]. But mention of God's name rather than anything else the archer may shout, is more desirable.' Al-Kharashī said on this point: 'It means that boasting is allowed, i.e. the mention, while shooting, of the glories of one's ancestor or tribe because that spurs others on, or walking with a proud gait on the battlefield as Abū Dujāna was doing when the Prophet saw him and said, "Surely, this is a manner of walking which God hates except in such a place."

'*Rajaz* is, at the time of shooting, also allowed according to a tradition transmitted by Muslim from Salama b. al-Akwaᶜ who said, 'I went forth once in pursuit of the enemy shooting arrows at them and saying in *rajaz*:

I am the son of al-Akwaᶜ; today is the day of sucking babes[2]

'*Tasmiya* is also allowed at the time of shooting, such as saying "I am the son of so and so." Shouting is allowed at the time of shooting on account of the way in which it encourages and takes one's mind off fatigue.' As regards the author's words, 'mention of God's name, rather than // anything else the archer may shout, is more desirable,' he [al-Kharashī] said: 'i.e. more fitting than all that, is the mention of God at the time of shooting, by *takbīr*[3] and so forth, but not what the archer says (*lā ḥadīth al-rāmī*) so as to praise himself and enumerate his good qualities. In some manuscript copies the word 'archer' (*al-rāmī*) is replaced by the word 'shooting' (*al-ramyu*) and what is meant by what he shouts is boasting, *rajaz*, *tasmiya* and shouting. In some other copies [the phrase *lā ḥadīth al-rāmī*] reads *li aḥādīth* [*al-rāmī*] and *aḥādīth* is the plural of *ḥadīth* which is what has been transmitted from the Prophet. The prepositional phrase (*li aḥadīth*) refers back to *jāza* [permitted] i.e. boasting, and what is mentioned with it are permitted, according to the traditions which have been handed down. Otherwise the rule is that it is forbidden on account of the way in which it induces arrogance and conceitedness. [Take] heed that the words 'boasting... etc.' apply to fighting against the unbelievers and lawful fighting among the Muslims.' Concerning the words 'boasting at the time of shooting' al-Shabrakhītī said: 'that means by [the archer] mentioning his good qualities.' It is related that the Prophet when shooting an arrow once said, 'I am a son of the ᶜ*awātik* of [Banū] Sulaym' i.e. the sweet-smelling women of Banū Sulaym. The tribe can also be mentioned as when Makḥūl said, 'I am the Hudhalī youth.' And with regard to the words, 'and *rajaz* [poetry]' he [al-Shabrakhītī] said: 'Ibn ᶜArafa[4] [said]: 'It is most suitable during battle because of what the Prophet said on the raid of Ḥunayn when he alighted from his mule and called for victory, 'I am the Prophet it is no lie; I am the son of ᶜAbd al-Muṭṭalib'.[5]

53B

1. See above, p. 46 n. 2.
2. See Ibn Hishām, *Al-Sīrat al- nabawiyya*, ii p.282. cf. al-Wāqidī, *Kitāb al-Maghāzī*, ii p. 541.
3. *Takbīr* is the exclamation of the formula '*Allāhu akbar*'=God is great.
4. All the four mss. and the ms copy of al-Shabrakhītī agree on the insertion of the name Ibn 'Arafa here; it seems that some word or words are missing from all the mss. e.g. 'said' (*qāla*).
5. See al-Wāqidī, *Maghāzī*, i, p.902.

54A // CHAPTER 30

ON THE DIFFERENT METHODS USED IN FIGHTING

I say, and success is from God: The methods used in fighting are numerous. Ibn Juzayy said in his *Qawānīn*, discussing methods of fighting: 'There is no objection to destroying their villages and forts and flooding them with water or cutting off people's water-supply, or devastating the area, or firing catapults, at them, but the use of fire is controversial. There is no objection to cutting down their trees whether fruit-laden or not. In the case of their having Muslim captives with them, their villages should not be burnt or flooded, and it is controversial whether under these circumstances firing a catapult at them and cutting off the water-supply is permissible or not. If they have women and children with them, there are four different opinions: (1) that the catapult may be used, though not to burn [villages] or flood them; this is the generally accepted opinion; (2) that all those methods are permissible; (3) that none of these methods is permissible; (4) that only burning is prohibited. If they shield themselves with women and children we must spare them, except when leaving them would cause danger to the Muslims, in which case they must be fought even though they have shielded themselves with women and children. To kill their beasts of burden is permissible contrary to the opinion of al-Shāfiʿī and Ibn Wahb. Mālik is reported as allowing the option of either killing the beasts of burden or hamstringing them. It is agreed that a horse actually carrying a rider may be killed. The permissibility of destroying bees is in dispute. It is not allowed to carry the unbelievers' heads from one place to another nor to carry them to the *wālīs*.' Among the forbidden things, enumerated

54B in the *Mukhtaṣar* is "the carrying of a head to another place". Al-Shabrakhītī said: // 'It seems that this holds good [only] when no benefit derives from it such as reassuring people that the man is actually dead. After all, the head of Kaʿb b. al-Ashraf was carried to Medina and that of Abū Jahl to Quraysh.'

It is also stated in the *Mukhtaṣar*, explaining what methods people may use in fighting: 'By cutting water, using any weapon or by fire if there is no other way and provided that there is no Muslim among them, even if they are in ships. If they are in forts with their children, burning and flooding may not be used. If they shield themselves with children, they must be left, except when it would be dangerous to leave them.' Commenting on the words of the author, 'by cutting water,' Al-Shabrakhītī said: 'i.e. [cutting water] off from them or [by cutting a supply] to flood them.' On the words 'any weapon,' he said: 'By shooting at them with a catapult, striking with a sword, piercing with a spear or arrow even if they have women, boys and children with them as the Prophet did to the people of al-Tā'if'. A little further on he said: 'Ibn Zarqūn stated that there is agreement on fighting them with fire, even though other methods were open to them, when both parties are in ships and there is no Muslim with the enemy, saying, "If we do not throw fire at them they will throw it at us." If he had said, provided no other method [of fighting] were open to them while on land and no Muslim whatsoever was with them—that is either on land or sea [it would have been more fitting]. In short they may be fought with fire while

55A in ships if there is no Muslim with them at all, // i.e. they may be fought with fire in places other than ships if again there is no Muslim with them and if there is no other method open to them. Be it known to you that if they have Muslims with them but failing to throw fire

at them may lead to the death of a large number of Muslims [from our side], it is permitted to fight them with fire, thus committing the lesser of the two sins.'

Al-Kharashi commenting on the author's words 'and when in ships' said; 'It is to emphasise the point, i.e. if another method is open or there is a Muslim with them, fire should not be thrown at them, though if both we and they are in ships, it is fitting to do so according to the generally accepted opinion, and the more so if both we and they are in forts. The point was emphasised to refute Ibn Zarqūn's claim, i.e. agreement on the permissibility of throwing fire at them if both we and they are in ships because if we do not throw fire at them they will throw it at us.' With regard to the words of the author 'and to fight them if they are in a fort without use of fire or flooding if they are accompanied by children', al-Kharashi said: 'It has been mentioned above that when the polytheists are in a fort with their children, it is allowed to fire catapults at them but not to burn or flood them. Women come under the same rule as children, the more so if [at the same time] there is a Muslim in the fort, provided no danger to the Muslims is anticipated.'

It is stated in the *Mukhtaṣar* after the words, 'It is allowed that one in need should take...' "and it is permitted to destroy their dwellings, to cut down palm trees, to burn [plantations] if it causes them harm or if it is not expected [that they would later pass into Muslim hands] and it is obvious that this is favoured, just as the opposite of it is [favoured if the opposite result is likely]. It is permissible to slay animals or hamstring them, [but if they are in pain] they must be killed. It is disputed whether or not bees may be destroyed if
55B they are numerous [so as to cause the enemy harm], if the honey // will not later be obtained [by the Muslims]. If they are in the habit of eating dead animals, [any animal we kill] should be burnt just as belongings which cannot be carried along."

CHAPTER 31

ON THE LAW CONCERNING FIGHTING THE UNBELIEVERS IF THEY SHIELD THEMSELVES WITH THEIR CHILDREN OR WITH MUSLIMS

I say, and success is from God: It is stated in the *Mukhtaṣar*: 'If they shield themselves with children, they must be left alone except on account of fear; and if they shield themselves with a Muslim, the Muslim should not be aimed at unless there is fear for the majority of the Muslims.' Al-Kharashī commented on the author's words 'with a Muslim' by saying: 'And when they shield themselves with Muslims, they may be fought, though the shielding Muslim should not be aimed at during shooting, unless it is feared that they will be a danger to the majority of the Muslims, in which case the inviolability of the 'shield' is not to be observed.' Then he said: 'Nevertheless, more provisos are mentioned in *al-Jawāhir* where it is said, 'When they use Muslims as shields in the front row, [they must be fought] for if we were to leave them, the Muslims would be defeated, evil would spread, and there would be a fear that the basis of Islam would be annihilated, as well as its people and those among them whose example is followed.'

ᶜAbd al-Bāqī said on this: 'They are to be left alone if they shield themselves with children and they are to be fought if they shield themselves with a Muslim, although a Muslim has a more exalted status than their children. The reason for this is that the hearts of the Muslims have a propensity towards hating the unbelievers. So if it were permitted to fight them // while they were shielding themselves behind their children, even though trying to avoid the 'shield', that might result in killing their children, as the Muslims might not take care over this, because of their hatred towards their children. The case is different if they shield themselves behind Muslims as al-Barmūnī declared.'

5A

My view is that the stipulation as regards fear mentioned in the *Mukhtaṣar* by the words 'unless there is fear for the majority of the Muslims', signifies positive or almost positive fear. Al-Suyūṭī said in his *Sharḥ al-kawkab:* 'But if there is no positive or almost positive fear that they will annihilate the Muslims, they should not be shot at. This is also the case when the benefit is neither for the whole, as for example, throwing some Muslims overboard a ship so that the others survive, for their survival is not for the whole i.e. does not concern the whole community; nor essential such as shooting at people in a fort who shield themselves behind Muslims, for its conquest is not essential and such an attack is in no way permissible.' He explained a little before this how the benefit can be essential, and for the whole [community] and positive–considered positive–by his words: 'This is shown by proof to be undertaken, because it is definitely right like shooting unbelievers shielding themselves behind Muslims captured in war. There it is permitted [to shoot], even if it causes their death, if the annihilation of Muslims is feared through leaving them alone. What is involved here is the killing of an innocent Muslim // because of what we have mentioned above concerning the coincidence of three conditions in this 'benefit'; namely, its being 'essential', for it cannot be attained by another means; its being 'for the whole' because it concerns the whole community, and its being 'positive' because it brings positive benefit without any doubt and because of the evil which would have been incurred if it had not been undertaken. The proof for taking this action is what is known from *Sharᶜ*, that one should give preference to the universal over the particular[1] and that to preserve the core of Islam even if it entails annihilating the unbelievers is deemed more essential by the *Sharᶜ* than sparing a special group of people [i.e. the Muslims used as 'shields'].

5B

1. See above, p. 49.

CHAPTER 32

ON THE LAW CONCERNING RUNNING AWAY FROM THE UNBELIEVERS [IN A *JIHĀD*]

I say, and success is from God: Be it known that to run away from an advancing army is forbidden by *ijmāᶜ*. It is stated in the *Risālā*: 'Running away from the enemy is a grave sin if the enemy are double the number of the Muslims or less; if they are more than double the number, there is no objection to fleeing.' Ibn Juzayy said in his *Qawānin:* 'It is not allowed to desert the line of battle if that may cause defeat for the Muslims; if not, it is allowed to one manoeuvring for battle or turning aside to join another company. To 57A manoeuvre for battle is to pretend to run away // while intending to return, as one of the tricks of war. Turning aside to join a company of Muslims present at the battle is allowed [but] turning aside to join a company which is absent or in town is a matter of dispute.

It is not allowed to abandon battle unless the unbelievers are more than double the number of Muslims. What is taken into consideration here is the numerical strength [of the enemy] according to the accepted opinion, but it is said that physical strength is the thing to be considered. It is said that abandoning battle is not allowed if the number of the Muslims reaches twelve thousand even if the number of unbelievers exceeds the double of this. If the Muslims realize that they are certainly going to be killed, then it is better for them to quit; if furthermore, they realize that they will be of no effect in demoralising the enemy, flight is obligatory.' Abū 'l-Maᶜālī said: "There is no dispute about that."[1]

Enumerating things forbidden, the *Mukhtaṣar* states: 'To flee [is forbidden] if the number of Muslims is half [of the unbelievers' number or more] and their total strength is not up to twelve thousand, unless they are manoeuvring or turning aside to join another company if there is fear.' Al-Kharashī said on this: 'The "*wa*" (and) used in his words *wa lam yablughū ithnay ᶜashara alfan* (and their total strength is not up to twelve thousand) is the *waw* of circumstance *(ḥāl)*: It refers to his words 'if the number of Muslims is half [of the unbelievers' number], i.e. if they are less than half, running away is allowed, the circumstance *(ḥāl)* being that the total number of Muslims is not up to twelve thousand. This defines what is meant. That is, when the number of Muslims reaches twelve thousand, flight is forbidden, even if the number of the unbelievers is more than twice the number of Muslims, provided they are united and equipped with arms. If they are not united, flight is permitted and also if the enemy is in a place where they can get reinforcements, while the Muslims can get no reinforcements. If these points are taken into consideration when 57B the number of Muslims has reached twelve // thousand, they should also be taken into consideration when the number of Muslims reaches half [of the unbelievers' number] though still less than twelve thousand.'

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1. As far as we know there are no instances when the jihādists fled in the face of the enemy except after putting up a stout resistance and suffering defeat. The heaviest casualties on the part of the jihādists were in Tsuntsua (Dec. 1804) when two thousand warriors were killed and Alwassa (Sept. 1805) where about one thousand were lost. In both battles, the surviving jihādists fled to their camps (*Infāq*. pp. 87, 100). In certain other battles there were also partial defeats and consequent flights (*Infāq*, pp. 86, 124, *et passim*).

CHAPTER 33

ON THE DIFFERENT KINDS OF BOOTY

I say, and success is from God: Ibn Juzayy said in his *Qawānin*, on the question of the kinds of booty: 'They are seven; the unbelieving men, their women, their children, their property, their land, their food and their drinks. As for the men, the *imām* has to make a choice between five things: to kill them, [to set them free, either by] grace or ransom, to make them pay *jizya* or to enslave them. He should do whichever is most beneficial of these. As for women and children, the *imām* has it at his discretion to [set them free, either] by grace or ransom or to enslave them.

Property is of four categories: (i) That which is entirely for God, which is *jizya*, *kharāj*, the tithe taken from *dhimmis* and people with whom peace has been contracted and any property acquired without fighting. All this is *fay'*, so the *imām* may dispose of it in the way he sees most fit. It is not divided into five, except according to al-Shāfiᶜī. (ii) That which goes to whosoever has seized it, without giving up the one-fifth. It comprises what he seizes anywhere in the land of war without incitement[1] *(ijāf)*, such as that which a fleeing captive runs away with from the unbelievers and what the enemy have abandoned for fear of being drowned, except if it is gold, in which case it is treated as *rikāz*.[2] (iii) [Booty] whose fifth goes to God and the rest goes to whoever has seized it. This is the *ghanima* and the *rikāz*. We mean by *ghanima* that which a man has seized by force; and in like manner is // what is seized by way of stealth and by way of trickery. (iv) That in which there is dispute over whether to give up the one-fifth or not. It comprises what slaves have seized with no free-born man accompanying them, or what is seized by women and boys with no man accompanying them or what its people leave behind without being overrun by an army. This is something in which the army has no share; it is also said that it has to be divided into five parts.

58A

As for lands, if they are overcome by force, they fall into three classes: (i) [a land] far away from our domination, in which case it must be razed by devastation or fire; (ii) a land under our domination but not inhabited—the *imām* may give it to a man of succour and the army has no right to it; (iii) a nearby and desirable land; the accepted opinion is that it should be made a *waqf*, the *kharāj* of which is to be used for the welfare of the Muslims for paying the stipends of soldiers and officials, constructing bridges, building mosques and [town-] walls and so on. It is said that it should be divided like the other types of *ghanima*, following al-Shāfiᶜī, and it is also said that it should be left to the discretion of the *imām*, following Abū Ḥanifa. A land annexed through agreement is dealt with according to the terms of the agreement.[3]

With regard to the food and drinks, they may be made use of without being divided up as long as they are in the land of war. Under the same ruling are victuals, fruits, meat

1. *Ijāf* is from the verb *awjafa* which means 'to agitate, excite or to make [a beast] run.' So whatever a Muslim can obtain in the land of war, without urging on his horse or camel for its sake, goes to whosoever has seized it without giving up the one-fifth *(khums)*. See Qur'ān, 59, v.6.
2. *Rikāz* means metals or other minerals buried in the earth. In the Ḥijāz it also means the property buried by men before the advent of Islam.
3. This also relates to the whole question of the distribution of land and conflict between Islamic theory and Habe practice. See above, Introduction, p. 27.

and fodder to the limit of what is needed by one who needs it or one who does not need it. If a large quantity remains after reaching the *Dār al-Islām* and after the dispersal of

58B the army, one has to give it out as alms; if only a little remains // one can use it oneself. It is also permitted to slaughter cattle for food and to use the skins to make shoes and *khifāf*.[1] Others said that it is not permitted to slaughter them. Permission from the *imām* is not required for slaughtering. And if the *imām* collects the surplus of this, then people need it, they can eat of it without his permission. Weapons can be taken to fight with and later returned, likewise a riding-beast can be ridden to a place, then taken back to the *ghanima*. Clothes also may be worn then returned. Ibn Wahb said: 'Neither weapons, clothes nor riding-beasts may be used.'

In the *Mukhtaṣar* Khalīl said: 'One in need may take shoes, a belt, a needle or food; in the case of cattle, fodder, clothes, weapons and an animal, they should be returned. The remainder, if abundant, should be returned but if that is too difficult, it can be given out as alms'.

1. *Khifāf* and *akhfāf* sing. *khuff*, are special boots or a type of legging for the foot and leg.

CHAPTER 34

ON HOW THE BOOTY SHOULD BE DIVIDED

I say, and success is from God: Ibn Juzayy said in his *Qawānīn*, explaining [the division of booty]: 'The *amīr* calls the roll of the army and divides four-fifths of the *ghanīma* among them while they are in the *Dār al-Ḥarb*. Abū Ḥanīfa said that booty should not be divided before it is taken into the *Dār al-Islām* and the commander has the option to divide booty either in kind or by value. He does whichever he finds more appropriate.'

59A Then, explaining who is to be given a share, he said: 'As for the male, // adult, free-born Muslim, it is unanimously agreed that he takes a share. As for the unbeliever, if he does not take part in fighting he has no share. If he fights, there are three different opinions; [one allows it, another denies it and] the third draws a distinction between whether the Muslims were in need of his help or not; if they were, he is to be given a share, if they were not, then he is not to be given anything. The slave is to be treated like an unbeliever. A boy capable of fighting is to be given a share; it is also held, according to al-Shāfiʿī and Abū Ḥanīfa, that he should not be given a share. A woman is not given a share if she does not fight, but if she fights, there are two [conflicting] opinions. A trader or a mercenary are to be given a share if they take part in fighting according to the generally accepted opinion. The lame, the leper and one whose left hand is cut off are to be given a share, not so the blind, the crippled and one who has both hands cut off.'

In explaining what entitles one to a share in *ghanīma* he said: 'By being present at the battle even when the booty is seized after the person has left, according to the generally accepted opinion; it is also said [that he is only entitled] if the booty was seized while he was present. Again, it is said [that he is entitled] simply by virtue of having entered enemy territory [*idrāb*]. So, according to the generally accepted opinion, if a man dies after the battle or is sent away by the *amīr* on some business in the interests of the Muslims, or if a man's horse dies or he sells it, his share is secure. But he who falls behind on the road and abandons the campaign has no share. If he loses his way until after the booty is seized, there are three opinions, viz: to give him his share, not to give him his share or to make a distinction, the latter being the generally accepted opinion. The distinction is that if

59B he has lost his way before entering enemy territory he has no share; // after entering the enemy territory his share is secure. The same ruling applies to ships, if wind turns some of them back. And if the army comes across a river in its way and some of them cross it and obtain booty while others remain behind, then the latter have no entitlement to booty. If the army splits into two sections and each section seizes booty separately, they should share out [the total] if each is near enough to the other to help in time of need. If a raiding party goes forth from the army and captures booty in a place near enough for help from the army to reach it, the army should have a share in its booty. But if the place is far, the army should not have a share; and if the army seizes any booty after the party has gone forth, the party's share is secure if they have had the leader's permission to go. Abū Ḥanīfa said: "If reinforcements reach them after the end of the battle and the seizure of booty, they take a share of the booty."

In explaining the law of the share assigned to a horse or other mount, he [Ibn Juzayy] said: 'A foot-soldier takes one share and the cavalryman takes three—one for himself and two for his horse. Abū Ḥanīfa said that a horse has only one share. A horse has the

same share whether it is owned, in mortmain, hired, borrowed or taken by force. The share it gains in all cases goes to its rider, even if it has been taken by force. If a man has several horses, he is given a share only for one of them, and in no case is he to be given a share for more than two, according to *ijmā'*. According to the generally accepted opinion
60A he should not even be given a share for a second horse // though this is contrary to the view of Ibn Ḥanbal. The *amīr's* share is the same as anybody else's. Neither mules, donkeys, camels, nor elephants, emaciated and worthless horses are to be given a share, though a horse which has an injury to its hoof and one which is slightly ill are to be given a share.'

CHAPTER 35

ON THE LAW CONCERNING CHEATING IN THE MATTER OF BOOTY [*GHULŪL*] AND WHETHER A MAN CAN SEIZE HIS SHARE OF BOOTY IF IT IS NOT DIVIDED ACCORDING THE THE *SHARĪᶜA*

I say, and success is from God: Ibn Juzayy said in his *Qawānīn*: '*Ghulūl* is forbidden according to *ijmāᶜ*. If a man who has cheated comes in repentance before booty is divided up, he should not be punished and what he has taken is to be added to the spoils. If his repentance comes after the dispersal of the army, he is to be punished and what he has taken is to be given out as alms.[1] It is disputed whether *ghanīma* comes into one's possession by seizure, as al-Shāfiᶜī opined, or by division, as Abū Ḥanīfa held. According to this, he who has sexual intercourse with a slave-girl belonging to the *ghanīma*, will receive the prescribed punishment and if he steals from it, he is to have his hand cut off, contrary to the view of Ibn al-Mājishūn. Saḥnūn said that if a man steals an amount worth more than three *dirhams* in excess of his entitlement, his hand is to be cut off, but not if what he steals is worth less than three *dirhams*.'

It is stated in the *Mukhtaṣar*, in the enumeration of prohibited things: 'And *ghulūl*, anyone found guilty of it, is to be punished.' Al-Kharashī said, expounding this: 'Ibn ᶜArafa defined *ghulūl* as "taking away from the booty anything which one is not allowed to take before it is duly divided". Ibn al-Qāsim said: // "One found guilty of *ghulūl* should be punished, but if he comes to repent, he should not undergo punishment (*al-taᶜzīr*)[2], because it is remitted by repentance. And know that a person who commits *ghulūl* is still entitled to receive his share of booty, though he must be punished if his guilt is discovered before he comes in repentance. All this is relevant before the division of booty, but after it has been divided, he will receive the prescribed punishment [for theft]". Al-Shabrakhītī* with regard to the words of the author, 'And anyone found guilty [of *ghulūl*] is to be punished' said: 'Not if he comes in repentance—contrary to what Saḥnūn held—even if he comes after the division of booty, the dispersal of the army and after it has become impossible to return [what he took away]. This is the explicit meaning of what is related in the *Nawādir* on the authority of Ibn Ḥabīb. [In this case a man] has to give one-fifth to the *imām* and the rest is given out as alms on behalf of [the soldiers who would have shared it].' ᶜAbd al-Bāqī said on this: 'A man found guilty of *ghulūl* is to be punished, but this does not deprive him of his share of booty. When he comes in repentance he receives no punishment even after the division of the booty, the dispersal of the army and

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1. The division of booty according to Islamic Law must have been a difficult discipline for the Sokoto *jihād* commanders to enforce. When their army captured Matankari, according to Bello (*Infāq*, p.73) every party collected what it could lay hands on and departed to their respective camps. Effort was made, as far as circumstances permitted, to correct the legal aberration. The leaders gathered what they could, took the fifth of it and entrusted it to 'Umar al-Kammu who was there and then appointed treasurer to ensure future conformity with the Law in matters of revenue. However, sixteen years after the beginning of the *jihād*, it seems that illegal acquisition of booty was still practised by the warriors, so much so that Muḥammad Bello wrote a book on the subject called, *Ḍiyā' al-'uqūl fī bayān ghilaẓ taḥrīm al-ghulūl* (1235 A.H.)
2. *Taᶜzīr* is a punishment, intended to prevent the culprit from repeating the same crime and to purify him (*li 'l-taṭhīr*). The law books prescribe *taᶜzīr* punishment for those transgressions for which no *ḥadd* punishment or *kaffāra* (expiation or atonement) is prescribed. See Qur'ān, s.5, vv.45, 89, 95. The type and extent of the *taᶜzīr* is entirely left to the discretion of the judge.

after it has become impossible to return [what he took away]. He has to give one-fifth to the *imâm* and give out the rest as alms on behalf of [the soldiers who would have shared it].

But as to whether or not a man may seize his share of booty if it is not divided according to the *Sharīᶜa*, al-Shabrakhītī and ᶜAbd al-Bāqī said: 'It is not *ghulūl* for one who has taken part in a *jihād*, under an unjust *wālī* who does not divide the booty according to the *Sharīᶜa*, to take away only what he is entitled to. That is acceptable because it only amounts to taking what is one's own due. // This was the opinion of al-Zurqānī, cited by al-Burzulī.' 61A

CHAPTER 36

ON THE ONE-FIFTH OF THE BOOTY [*KHUMS*] AND THE OTHER SOURCES OF INCOME OF THE STATE TREASURY AND THE LAW CONCERNING THE RECOVERY OF WHAT OPPRESSIVE GOVERNORS AND OFFICIALS HAVE SOLD OUT OF THE STATE TREASURY

I say, and success is from God: Be it known that to set aside a fifth (*khums*) of the booty is an obligation on all Muslims, even their slaves. It is stated in the *Mukhtaṣar:* 'A Muslim has to give up a fifth—even if he is a slave, according to the more correct opinion, but not if he is a *dhimmī.*' Al-Kharashī said on this: 'A Muslim gives up a fifth of the booty he seizes, even if he is a slave, according to the accepted opinion. This is Ibn al-Qāsim's point of view to which he [the author of the *Mukhtaṣar*] referred by the words, "according to the more correct opinion", no matter if that Muslim be male or female, adult or other wise. But as for the *dhimmī*, he does not give up the *khums*—no one contradicted this, on account of God's words: "And know that whatever booty you take, the fifth of it is God's"[1] which is addressed to the believers.'

As for the way in which the *khums* and the other sources of income of the State Treasury are to be spent, it is also stated in the *Mukhtaṣar*, 'The *kharāj* on land, the *khums* and the *jizya* [are to be spent] on the Prophet's descendants, then on the public utilities, beginning with those who are in the place where the income was obtained, though if others are in greater need, they should be given first.[2] ᶜAbd al-Bāqī said on this: 'The *Mudawwana* put the Prophet's descendants and the public utilities on an equal footing, except that priority may be given to the former as a praiseworthy act, as al-Bisāṭi opined. When the former are given, their share should be plentiful because they are not given a share of the *zakāt.*' Then he added: 'Ibn Jamāᶜa put in verse what is collected for the State Treasury:

61B // The sources of income for the State Treasury // are seven,
In a line of verse has the writer included them:
The *khums*, the *fay'* the land tax, poll tax and the tithe,
An [unapportioned] inheritance share which is determined by law, and property whose owner is untraceable.

It would have been more fitting if he had said "inheritance in the form of property" because the state does not inherit by right, according to our [Mālikī] *madhhab;* untraceable property is property whose owner is not known.

Shurb al-zulāl put it as follows:
The sources of income for the State Treasury are the *khums*, the tithe,
The poll tax, the land tax, *fay'* and the surplus.

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1. Qur'ān 8, v.41.
2. One of the charges which the *jihād* leaders brought against the Habe kings was the misuse of public monies exacted from the people through oppressive and tyrannical methods (see *K.al-farq*, p.561 and Hiskett's discussion on taxation in the Habe kingdoms, *ibid.*, p. 574.) The Caliphate, after the Shehu's death, did not follow consistently the precise legal theory of revenue and expenditure which the Shehu elaborates in this chapter. As D.M. Last writes, 'It is clear however, that the [fiscal] law was not fulfilled in detail, and that legal terminology became used as rough descriptions of traditional practice, modified after the *jihād*'. For a full discussion see Last, *Sokoto Caliphate*, pp.102-7.

Then that the owners of which are unknown
And inheritance in the form of property whose heirs are not known.
These seven constitute the State Treasury,
For him who cares for the lawful income.

Ibn Juzayy said in his *Qawānīn:* 'The matter of the *khums* in the [Mālikī] *madhhab* is left to the discretion of the *imām* who takes what he requires from it even if it is the whole, and spends the remainder on the public utilities.' Then he said: 'The practice of just *imāms* concerning *fay'* and *khums* is to begin by securing the dangerous places and frontier posts, by preparing armaments and by paying the soldiers. If there remains anything, it goes to the judges, state officials, the building of mosques and bridges and then it is divided among

62A the poor. If any still remains, the *imām* has the option // of either giving it to the rich or keeping it to deal with disasters which may occur to Islam. It is disputed whether a man who is esteemed [for his services] and exploits should have preference in grants or whether he should be treated equally with others.'

If you ask whether or not a Muslim should be given from the State Treasury an amount over and above what is sufficient for him, I would say, that the answer to this is as reported in *al-Zaharāt*, that al-Ujhūri, when asked about this, replied: 'Know that no Muslim should draw from the State Treasury more than what he needs when the State Treasury contains no more than sufficient for those who are entitled to it, as is the case at the present day. If a man takes more than what he is in need of, he must keep it aside for those who deserve it and then return it.... In the same way anyone who has sufficient for his

62B basic needs without help from the State Treasury // should take nothing from the treasury; [but if he does] he should keep it aside for those who deserve it and then return it.' In the same book ᶜAbd al-Maᶜālī, having cited this reply and the view of the scholars of the *madhhab*: It may be gathered from the views we have cited that the reliable [assumption] on which a *fatwā* must be based, is that everyone is to be given from the State Treasury sufficient to sustain him for a year. He is not to be given more than that when the revenue of the State Treasury is not in excess of its expenditure; its expenditure is the amount spent on the Prophet's relatives and the concerns of the Muslims.'

It is stated in *Ḍiyā' al-khulafā'*: 'Moreover, not all Muslims are to be equally paid from the State Treasury, nor is it wholly for the poor but its administration is to be left to the discretion of the *imām*. The proof for that is that the Prophet, when al-ᶜAbbās asked him

63A to give him a portion of some property, said, // "Go and take." Al-ᶜAbbās spread his cloth and piled on it more than he could carry. Again, Abū Bakr gave Abū Ayyūb al-Anṣārī one of the richest of the Anṣār, 1500 dīnārs.' Regarding the author's words, 'The one-fifth of what the Muslims seize through *ijāf* [1] must go to the *imām*,' *Taḥqīq al-mabānī* states: 'The *imām* disposes of it at his discretion; if he wishes, he can put it in the State Treasury to be spent for the welfare of the Muslims such as purchasing weapons or any other thing he considers advantageous to the Muslims. If he wishes, he can divide it up or he can give the whole of it to the Prophet's relatives or some other persons; or he can give some of it to the former and some to the latter.'

In the chapter on the State Treasury in *Ḍiyā' al-khulafā'* it is stated: 'This is a matter in which kings went contrary to the practice of the prophets, the messengers and the Orthodox caliphs. The kings used to hoard up property and keep it hidden from the subjects,

63B preserving it for a day of misfortune. The messengers of God // and their caliphs after

1. See above p. 106 n. 1.

them used to give out property without hoarding it and were generous to men. So [property served them as] an army and bodyguard. This was the practice of the Prophet and likewise the Orthodox caliphs after him—Abū Bakr, ᶜUmar, ᶜUthmān, ᶜAli, his son al-Ḥasan and ᶜUmar b. ᶜAbd al-Aziz. The Prophet had no State Treasury nor had the Orthodox caliphs after him, but they divided up the property which was collected among the Muslims immediately. What was left over or what the people did not need at the time was deposited in a house and if anyone had been absent or if someone who had been present was [particularly] in need, he was given his share. Then [what remained] was distributed so that not a single *dirham* was left over in the house.[1]

As to the law concerning the recovery of what the oppressive governors and officials 64A sell out of // the State Treasury, al-Wansharisi stated in his *Miᶜyār:* 'Ibn Ḥamdin said that the correct [procedure] is to ignore that and not to pay heed to it, even if they were unjust and dishonest; because that opens a door of evil into investigating people's property, since such cases [of dishonesty] frequently occur. *Al-Shaykh* Abū al-Ḥasan said that if we set to work to eradicate such cases and investigate them, it will no longer be kingly treatment. The expedient thing is to ignore it, though the correct thing is to inquire into the deeds of unjust *qāḍīs* and oppressive officials and that is to avoid the greater of the evils by committing the lesser. The Prophet said, "If two evils present themselves, the lesser [may be committed] to check the greater."

O bretheren, it is incumbent on you to hand over the *khums* and the other revenues of the State Treasury and give them to those who deserve them. You have to avoid spending from God's property without due right. It is related in Bukhārī's *Ṣaḥīḥ* on the authority of Khawlat al-Anṣāriyya who said that she had heard the Prophet say, 'Certain men wade into God's property without due right; Hell will be their lot on the Day of Resurrection.' We beseech God to preserve us [from this].

1. There is a strong tradition in Northern Nigeria that the *amīrs* gained no profit from the tributes and the other payments they received. They used to pay them out to their followers and when the British came and stopped the *amīrs* levying tribute, they were unable to meet their recognised obligations. (Communication from Professor H. F. C. Smith.)

CHAPTER 37

ON THE LAW CONCERNING WHAT THE UNBELIEVERS TAKE FROM THE POSSESSION OF THE MUSLIMS

I say, and success is from God: Ibn Juzayy said in his *Qawānīn*, explaining this: 'It falls into four categories: (i) What they have in their possession when they embrace Islam.
64B That belongs to them. (ii) // What they take with them to the lands of the Muslims under guarantee of protection (*amān*). That also belongs to them. In the *Mudawwana*, [Saḥnūn] said: "I do not consider it desirable that this should be purchased from them." Ibn al-Mawwāz held that it was allowed to buy that from them but if the owner came to claim, even say, a blanket (*liḥāf*), [1] he could take it if he paid its price. (iii) What a Muslim, who enters their area under a guarantee of protection, buys from them. The owner of the thing has no claim on it unless he repays its price. But if that was given as a gift to the Muslim entering their area, then its original owner has a better claim to it without paying the price unless [that Muslim] had rewarded the giver for his gift. If he [the Muslim] frees a slave [acquired thus, by gift or purchase] or makes a concubine [similarly acquired] pregnant, there can be no going back on the deal, [2] contrary to Ashhab's opinion. (iv) What a Muslim [army] acquires as booty. This goes back to those Muslims who had it in their possession [before it was seized by the unbelievers] and it should not be divided if the [original Muslim] owner is known. If the owner gets to it before it is divided, he takes it without any payment but if it happened that the ownership was not known until after it had been divided, the owner has a better claim over it [only] if he pays the price, according to Ibn Ḥanbal. Al-Shāfiʿī held that the owner can claim it without paying the price. Abū Ḥanīfā said, "If they [the unbelievers] had taken the thing from us by force, then its owner has a better claim to it, without paying anything, [if he gets hold of it] before its division; after division, he can take it by paying the price. But if they had taken it without force, then it goes straight to its owner."

It is stated in the *Mukhtaṣar*: 'An identified man, even a *dhimmī*, takes what is recognised as being his, before division, without paying anything, having taken an oath that it belongs to him. It is conveyed to him if that suits him best, otherwise it is sold on his behalf. The division of it is not sanctioned except according to the interpretation of certain scholars, if this would be more beneficial; this is not the case if the man is not identified.'

65A Al-Shabrakhītī commenting on the words of the author, 'he takes an oath // that it belongs to him', said: 'It means if either a Muslim or a *dhimmī* finds a thing belonging to him included in booty before it is divided, and the evidence bears him out, he can take it away without paying anything in return, but, having taken a legal oath that he has not sold or given it away nor has it been removed from his ownership in any legal way and that it is still in his possession at the present moment. Then he is entitled to lay hands on it and to take it away in the legal way, as an entitlement, subject to confirming his ownership of it by an oath which is called the oath of exposition (*istiẓhār*), which concludes the matter.'

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1. *liḥāf* is a special type of blanket which is used either as a wrapper (in bed) or as a mattress.

2. A slave once freed cannot be enslaved again, and a slave-girl, if she gives birth to a child from a free-born man, cannot be sold or given away and becomes free on the death of her master. The child of such a union is free.

It is stated in the *Jāmi*ᶜ, a commentary on the *Mukhtaṣar*, on this point; 'He takes an oath that his ownership over it has not ceased and that he has neither sold it nor given it away nor given it as alms nor has it gone out of his possession in any other way. This is the judicial oath [of *qaḍā'*].

Al-Shabrakhītī commenting on the author's words 'if the owner is not identified' said 'Yet if it is an article known to belong to one of the Muslims, such as a copy of the *Qur'ān*, the *Muwaṭṭa'*, al-Bukhārī's *Ṣaḥīḥ* or if known to belong to a *dhimmī*, then it can be divided, according to the generally accepted opinion, giving preference in the matter of its ownership to those who have seized it. Tradition supports the view that it can be divided at the outset as we have shown.'

CHAPTER 38

ON THE LAW CONCERNING GIVING FREEDOM TO SLAVES OF UNBELIEVING BELLIGERENTS IF THEY FLEE TO US, AND THE PERMISSIBILITY OF TAKING AS CONCUBINES THE WOMEN WHO HAVE BEEN CAPTURED FROM THEM AFTER WAITING FOR THE PASSING OF ONE MENSTRUATION (*ISTIBRĀ'*) EVEN IF THEY HAVE HUSBANDS IN NON-MUSLIM TERRITORY

65B I say, and success is from God: As for // giving freedom for those we have mentioned in the way shown above, it is stated in the *Mukhtaṣar*: 'A belligerent's slave who embraces Islam is free if he flees to us or stays on till he is captured as booty, but not if he goes forth after his master has become a Muslim'. Al-Kharashī said, explaining this: 'It means that a belligerent's slave becomes free by his fleeing to the land of the Muslims before his master has accepted Islam, because by so doing [it is as though] he captured himself as booty. It makes no difference whether he comes over already a Muslim or not,[1] so [Khalīl's] world *yuslim* [embraces Islam] has no significance. If he comes over bringing any property, it belongs to him and he does not have to give up the *khums*. He also becomes free if he accepts Islam and stays on with his master in the non-Muslim territory until he is captured by Muslims as booty, while his master is still a polytheist.[2] This is when he comes forth to us as a believer, or an unbeliever before his master has embraced Islam.' ᶜAbd al-Bāqī said: 'But when the slave remains there until he is captured as booty and then alleges that he became a Muslim before that, then he will not be believed because those who seized him have the right over him. As to the author's words 'a belligerent's slave who embraces Islam is free if he flees to us or stays on till he is captured as booty', ᶜAbd al-Bāqī said: 'Similarly if he does not become a Muslim, according to the reliable opinion.'

Al-Shabrakhītī said on this: 'He is free by common consent since he now owns himself. But as to the fact that the Prophet set free those slaves of al-Ṭā'if who had come to him as Muslims, it was a consent from him to give freedom to those particular men not a manumission'.[3]

66A As// regards the permissibility of taking as concubines, women who have been captured from belligerents after waiting for the passing of the period of menstruation, even if they have husbands in non-Muslim territory, al-Khāzin, explaining God's word: 'And all married woman, save those your right hands possess [are forbidden]'[4] said: 'That means female captives who have been captured while still having husbands in non-Muslim territory. It is lawful to their owner to have sexual intercourse with them after waiting for the passing of one period of menstruation, because captivity nullifies the contract of marriage between her and her husband. Abū Saᶜīd al-Khudrī said, "The Messenger of God sent an army to Awṭās where they captured some women who had polytheist hus-

1. Provided, it seems, he becomes a Muslim as soon as he has crossed over.
2. The idea is that embracing Islam freed a slave from the ownership of an unbelieving master. But if the master became a Muslim before his slaves, their ownership was still valid.
3. i.e. those slaves running away from their unbelieving masters had automatically gained their freedom. So the Prophet did not manumit them but only confirmed that they were free.
4. Qur'ān, 4, v.24.

bands. They abstained from having sexual relations with these women so God revealed the above verse."

With regard to the words of the author [of the *Mukhtaṣar*]: Captivity nullifies the contract of marriage,' al-Kharashī said in his commentary: 'It means that if the unbelieving married couple are captured together or one after the other, the contract of marriage between them is nullified and it is lawful to have sexual relations with the woman after waiting a period for the passing of one menstruation. She does not observe ᶜ*idda* because she has thereby become a slave.

The *Risāla* states: 'The waiting-period (*istibrā'*) of a slave-girl is the passing of one menstruation whether ownership of her changes through sale, gift, captivity or other means.' *Taḥqīq al-mabānī* states: *Istibrā'* in the *Sharīᶜa* is to enquire into the condition of wombs, when ownership changes, with a view to safeguarding questions of parentage [so that the child belongs to the legitimate father]. That is an obligation, like the ᶜ*idda* in the case of

66B wives, according to the Prophet's saying, // "There should be no sexual intercourse with a pregnant woman[1] until [after] she gives birth, nor with one who is not pregnant until she menstruates once." This *ḥadīth* was related by Abū Dāwūd and al-Ḥākim who recognized it as sound.'

1. This statement refers to slave-girls taken as concubines, purchased from or given-away by a previous owner.

CHAPTER 39

ON THE LAW CONCERNING ONE WHO HAS BEEN FOUND AS A SLAVE IN THE HANDS OF THE UNBELIEVERS AND CLAIMS TO BE A FREEBORN MUSLIM BUT HAS NOT EMIGRATED: AND THE LAW CONCERNING ONE WHO HAS BEEN BROUGHT FROM A LAND WHERE THE SELLING OF FREE MEN IS COMMONPLACE AND CLAIMS TO BE A FREE-BORN MUSLIM

I say, and success is from God: Muḥammad b. ᶜAbd al-Karīm al-Maghīlī wrote in his *Ajwiba* addressed to the *amir* al-ḥājj Askia [Muḥammad].; 'As for one you find in their hands, as a slave, who claims to be a free-born Muslim, his word is to be accepted until proof is established to confirm that he is a slave.' Then he added; 'Any person you leave from among them, because he claims that he is a free-born Muslim, then it becomes evident to you that he was an unbeliever, enslave him again'.[1]

As to one who has been brought from a land where the selling of free men is common place and claims to be a free-born Muslim, it is reported in *al-Miᶜyār* that Ibn Zurb was asked about a slave in a man's service who claimed to be a free-born Muslim and it was shown that he had been bought in a place where the selling of free men was widespread and well-known. He answered: 'The slave is to be freed from the hands of the man he is working for until the latter can prove that he bought him from a previous owner.' Abū 'l-Aṣbagh b. Sahl, the famous scholar said in his *Nawāzil:* 'If a slave alleges that he is free-born and that he comes from a place where the selling of free men is commonplace, and the purchaser agrees with him that he bought him from that place, it is the view of

67A Muḥammad b. al-Walīd and Yaḥyā b. ᶜAbd al-ᶜAzīz that the purchaser should be asked // to prove the man was a slave. This was also Saḥnūn's point of view.'

Aḥmad Bābā said in his *Kashf:* 'The jurisconsult Maḥmūd b. ᶜUmar b. Muḥammad Aqīt in his time, used to give decision in favour of anyone who asserted that he was free and remove him from the hands of the man who owned him, until the latter substantiated his right of ownership, otherwise he would give judgement for the former's freedom. In this way also, al-Ḥāfiẓ al-Makhlūf al-Balbālī passed his judgement.' Then he added, 'Ibn Lubāba said that the burden of proof falls on the one who claims to be free.'

My view is that the conditions of all people in these Sudanic lands are, according to what is reported in the above work, similar. 'The only thing that distinguishes them, the one from the other, is that some are born Muslims and others are born unbelievers. And thus confusion arises over those who were brought to them [as slaves] and can no longer be distinguished.'[2]

If you were to ask whether it is established that the Prophet and his Companions used to make investigations and hesitate when buying slaves[3] or if they purchased heedlessly,

1. These questions were of considerable, importance. The Shehu had discussed them in his *Masā'il* years before the *Bayān* was written and Bello complained that Muslims had been sold by the Yorubas to the Europeans on the Coast, (*Infāq* p. 22). Through the fighting in the *jihād*, it had become of greater urgency to decide who was a slave and who was free-born among the captives before booty was divided. However, it must be noted that slaves were apparently not usually manumitted on conversion to Islam. Yet hope of emancipation appears to have been a crucial factor in joining the *jihād*. A good instance is provided by the slaves in Alimi's (*Ṣāliḥ*) army in Ilorin (See S. Johnson, *History of the Yorubas*, (repr. London, 1960, pp. 193–4.
2. This last quotation is also from Aḥmad Bābā's *Kashf*.
3. That is to be sure the person sold was not in actual fact a Muslim forced into slavery.

I would say that the answer to that is as stated in the aforecited book: 'The condition of people in the days of the Prophet and his Companions was clear because at that time unbelief predominated among the people. So any slave who was owned at that time was known to be an unbeliever and because people who accepted Islam in those days were well-known. Note: it is stated in *al-Mi'yār*: 'He who sells a free-born person is obliged to seek him out and return him and refund the purchaser if he was not aware that the person was free-born, The seller should be punished according to the ruler's discretion.
67B If the purchaser was aware // that the person was free-born, it is said that he should be reimbursed; and [according to another opinion], it is said that he should not be reimbursed but he should give out the price as alms by way of punishment. If the seller searches but fails to find the man he has sold until a long time elapses, he has to pay the man's full blood-wite. This was the decision (*fatwā*) that Muḥammad b. Bashīr the *qāḍī* of Cordova gave, meaning that the blood-wite should go to the person's heirs as if he has been killed.

CHAPTER 40

ON THE LAW CONCERNING THE CHILDREN AND POSSESSIONS OF A BELLIGERENT IF HE HAS EMBRACED ISLAM IN NON-MUSLIM TERRITORY AND CONTINUES TO LIVE THERE OR COMES OVER TO US LEAVING HIS CHILDREN AND POSSESSIONS THERE

I say, and success is from God: It is stated in the *Mukhtaṣar:* 'And his children and his possessions are *fay'*, absolutely.' Al-Kharashī said on this: 'The possessive adjective [his] in 'his children' refers to the person who has embraced Islam, as can be understood from what follows it. The meaning being that if a belligerent accepts Islam and flees to us or stays on in his land till we capture it, then his children and his property are booty for the army which enters his land. This is what he [al-Khalīl] meant by *fay'* and it would have been better if he had explained it in this way. As to the belligerent's wife, she is to be considered booty, by common consent, and so is her dowry. No distinction is made between the young and the old among his children whether the belligerent remains in his land or joins us leaving behind his children and property, whether he embraces Islam in our land under pledge of protection or whether he embraces it in his land. This is the meaning of 'absolutely' [in al-Khalīl's statement].'

To explain the author's words: 'And his children and his possessions are *fay'* absolutely', ᶜAbd al-Bāqī said: 'That refers to the belligerent who has embraced Islam, then the Muslims raid his territory and capture a child of his whose mother conceived him before his father professed Islam which is proved by a former statement [of Khalīl]: "and [he passes into] slavery if his mother conceived him // while his father was an unbeliever." But if she conceived him after his father's profession of Islam, he is free by common consent as stated by Tatā'ī. As to Khalīl's word *fay'*, he said: 'i.e. booty that goes to the army which enters his land' and on the word 'absolutely': 'Whether his children were young or old, whether the belligerent came over to us after his profession of Islam leaving his children there, or remained in non-Muslim territory.'

68A

It is stated in *al-Jāmiᶜ*, a commentary on the *Mukhtaṣar*, explaining the word 'absolutely': 'That means whether his children were young or old, whether he came to us or stayed in non-Muslim territory, after becoming a Muslim, whether he gets to them before the division [of booty] or afterwards; that makes no difference except in the opinion of those who hold that they only become *fay'* if he comes over to us and otherwise they do not become *fay'*; on the contrary they are his property since they have been under his hand and nobody else has possessed them. These are two interpretations of [what is stated in] the *Mudawwana.*'

Ibn Juzayy said in his *Qawānin:* 'If a belligerent embraces Islam, then the Muslims invade his land, his wife becomes *fay'* and so do his children according to the generally accepted opinion.'

CHAPTER 41

ON THE LAW CONCERNING THE POSSESSIONS OF MUSLIMS LIVING IN NON-MUSLIM LAND

I say, and success is from God: According to *al-Zaharāt*, al-Ujhūrī was asked about a group of Muslims living under an unbelieving king on whom the Muslim ruler made a raid, capturing some booty from them. Those Muslims then came and recognised their possessions; were they entitled to take them away or not? He replied: 'The property of the Muslims living in non-Muslim territory is *fay'* which should be part of the property

68B of the State Treasury. // Al-Burzulī held this opinion, taking his authority from certain scholars.' Then he said: 'I was told that Aṣbagh held this view because the owner of the property has no power over it but the power is in the hands of the unbelievers. Ibn Rushd was also of this opinion.' He added; Therefore under no circumstances can anybody from among those Muslims take away anything he finds in the booty belonging to him.'

It is reported in the *Miᶜyār*: 'Aṣbagh used to give his legal opinion that such property could be lawfully seized [as booty] because its owner had no power over it, but the power was in the hands of the unbelievers; this agrees with Ibn Rushd's opinion..... Al-Burzuli said: "The case of the property that the Companions left in Mecca is used as proof for that, on account of the Prophet's saying, 'Did ᶜUqayl leave any abode for us?' etc. In fact it is more appropriate [to take that property] here because the owner has accepted living among the polytheists so he and his property are under their jurisdiction notwithstanding that, according to *ijmāᶜ*, he ought to have emigrated." Again the *Miᶜyār* reports in another place: 'Ashhab and Saḥnūn gave their opinion that this property is not allowed [to be taken as booty] on account of the general application of the Prophet's saying, 'A Muslim's property is not allowed [to be taken from him] except if he gives it of his own free-will.' Again, in another place; 'The later scholars had different views on the permissibility of seizing such property, some arguing that it should be judged according to the [religious] status of the land and others that it should be respected in consideration of the owner being a Muslim. The first is the correct one.'

It is stated in *al-Jāmiᶜ*, a commentary on the *Mukhtaṣar*, explaining the author's word,

69A 'And the children of a belligerent and his possessions are // *fay'* absolutely' : 'If a Muslim moves to a land of war and stays there, does his property thus become *fay'* in consideration of the place he is staying in, or not, if consideration is given to the fact that it is the property of a Muslim, because the basic rule is to forbid [taking away a Muslim's property]; the opinion being arrived at by deduction.....'

CHAPTER 42

ON THE LAW CONCERNING REDEMPTION OF MUSLIM CAPTIVES AND AFTERWARDS CLAIMING BACK THE AMOUNT [FROM THE REDEEMED]

I say, and success is from God: The redemption of Muslim captives is obligatory. Ibn Juzayy said in his *Qawānīn:* 'They have to be rescued from the unbelievers by fighting. If the Muslims are unable to do that, they have to pay ransom for them. The rich captive should ransom himself and the *imām* should pay the ransom of the poor from the State Treasury; if this is insufficient, the amount should be raised from the Muslim community at large. The *imām* can compel non-Muslim chiefs to [help to] ransom Muslims and then later pay them the price.'

The *Mukhtaṣar* states: [The Muslim captive] is to be ransomed from [the collected] *fay'* then [if this is not possible] from the wealth of the Muslims, then from his own wealth." Al-Kharashī said on this: 'That means the Muslim captive must be ransomed. The amount comes primarily from *fay'* which means [here] the State Treasury, according to Ibn Bashīr and Ibn Rushd. If the State Treasury does not contain sufficient for that or if it is [too distant] to be got at or if it is [near] but could not meet the full sum, money to cover the amount the State Treasury lacks, or to pay the whole ransom, comes from

69B the property of the Muslims in accordance with their means, even if // their entire property is exhausted, so long as it is not feared that [such a drain on funds] would lead to their being conquered by the enemy. This is why Ibn ᶜArafa said: "The captive is considered to be one of them [the whole Muslim community] if he has wealth, but if the Muslims withhold that 'or if', as added by al-Shabrakhītī, 'they cannot afford it,' he is ransomed by his own wealth if he has any." The use of the wealth of the Muslims [at large, to pay ransom] rather than the prisoner's wealth is because his redemption is more for the good of the Muslims' property than it is for his own in particular and [such a notion] will urge them to fight the unbelievers, and furthermore it is easier to pay from the Muslims' property than from his own. ᶜAbd al-Bāqī said: 'The *imām* should not compel any Muslim to pay that but they should pay according to their means.'

As to claiming the amount paid in ransom, Ibn Juzayy said in his *Qawānīn:* 'He who pays the ransom for a captive at the request of the latter, can claim the amount afterwards by common consent; if he ransoms him without his request or his knowledge, he can also claim, except according to al-Shāfiᶜī. It is said that he can claim from the man himself if the man is rich, and from the State Treasury if the man is poor. To pay back the amount paid for one's ransom has priority over repaying a debt. If either spouse ransoms the other, the amount cannot be claimed unless the payment was by request, this is also the case among relatives such as fathers, mothers, sons, grandfathers, paternal and maternal uncles, brothers and their sons and sisters and their sons.'

70A The *Mukhtaṣar* states: 'The exact thing // in kind or the value of it can be claimed from the rich and from the poor, if one does not intend [the payment of ransom] as charity, or if there was no other possible way of ransoming him, except [if the ransomed person is] within the prohibited degrees of marriage, or is a spouse—provided [such status] is known —or [is a slave whose] manumission would be at [the master's] expense, unless [the slave] requested [the master to ransom him] and put himself under an obligation [to repay the master]'.

CHAPTER 43

ON GIVING PROTECTION (*AMĀN*)

I say, and success if from God: Ibn Juzayy said in his *Qawānīn*: '*Amān* is of three types; two are general and can be only pledged by the ruler. They are the *amān* reached by a peace agreement and the *amān* of *dhimmis*, as will be discussed below. The third type deals with a single unbeliever or a limited number [of them]. It can be validly granted by any Muslim of sound mind, including a woman, according to all four *madhhabs;* and by a slave, except according to the *Ḥanbalis;* and by a youth who understands what *amān* means, among the *Mālikis* only. Such *amān* when given binds the *imām* and others to fulfilling it, provided it incurs no harm, no matter whether it produces any benefit or not, whether it is given verbally or written in any language or by some indirect declaration of the intent or by some indicative sign; even if the unbeliever has assumed that the Muslim intended *amān* while the latter actually did not, the unbeliever must not be killed.[1] If the *amān* has been extended to the unbeliever's family and property, it must be fulfilled. A man engaged in trading or on an embassy does not need // an *amān* because that mission automatically gives him protection.' A little further on he said: 'If a belligerent comes to us under *amān* and leaves some property behind with us, it belongs to him and to his heirs after him. And if a non-Muslim (*ᶜilj*) is caught on some road and he invents some tale to save his skin, the truth or falseness of which cannot be ascertained, he should be returned to a place where he feels safe if his story is not accepted.'

70B

The *Mukhtaṣar* states: 'The killing [of an unbeliever] is not to be carried out [if a Muslim gives him *amān*] by word or by a sign which could be interpreted [as giving *amān*] even after the conquest, provided that would cause no harm; if a belligerent, imagining himself [to have *amān*,] comes [over to us] or [if the *imām*] instructs people not to give him *amān* but they disobey, or forget or were not aware of [the instruction], or if the belligerent took a *dhimmi* for a Muslim [and had *amān* from him], but not [if he knew him to be a *dhimmi* and did not realise the *amān* needed] ratification, then [the *imām*] should ratify [the *amān* in all these cases] or send the unbeliever back to his land. If he is caught coming [to us], but while still in their land and he says that he has come to ask for *amān* or [if he is caught] in our land [carrying goods] and he says that he thought we would not interfere with a trader, or [if he is caught] between the two lands, he has to be returned to the place where he feels safe. If [he has] any circumstantial evidence to present [concerning his status], it can be considered; and if he is carried back to us by [an opposite] wind [while on his way back to his territory] his previous *amān* holds good until he returns'.

1. Breaking of bonds of *amān*, as this chapter elaborates, is a heinous crime. Al-Kānemi accused the jihādists of breaking bonds (*Infāq*, p. 127) and Bello denied (ibid., p. 134). We can cite only one instance of breaking *amān* by the jihādists; that was when 'Alī Jedo, not knowing that negotiations for *amān* were in process between a group of Tuareg and the Shehu, and without instructions from the latter, launched an attack on those Tuareg (ibid, p.99). On the other hand, *amān* was often unilaterally broken by the enemies of the Caliphate. An example of that was when a group of Tuareg were double-dealers before the battle of Tsuntsua (ibid. pp. 87, 90). Another example was when the Shehu was on his way to Magabshi, a group of Tuareg attacked the rear of his army on the very day they negotiated *amān* (ibid, p. 82) with the Shehu and were granted it. Muḥammad Bello often complains in *Infāq* that bonds of *amān* were not kept by the enemies and 'Abdullāh agrees with him (*Tazyīn*, 82), Moreover, the point on which negotiations between the leaders at Gobir and Degel broke down finally was that the latter were apprehensive that Gobir would treacherously break any agreement.

CHAPTER 44

ON MAKING PEACE WITH BELLIGERENTS ON TERMS OF TRUCE

I say, and success is from God: Ibn Juzayy said in his *Qawānīn:* 'It is allowed to con-
71A clude such a truce under four conditions: (i) that there is need // for it; therefore if it does not serve any purpose it is not allowed, even if the enemy offers money. But if it is to some advantage, such as when one is unable to fight, either altogether or for a specific period, [such a truce] is allowed, either with payment of compensation or without it, whichever is for the good of the Muslims. (ii) that only the *imām* can conclude it. (iii) that it should contain no unfavourable stipulation such as leaving a Muslim in their hands or giving them money unless one is afraid, though paying money is allowed under pressure of fear. (iv) that its duration should not be longer than the period for which it is adjudged to be necessary. Abū ᶜImrān said that it should preferably not exceed four months, except on account of weakness.'

The *Mukhtaṣar* states: 'The *imām* can conclude a truce for some advantage, if it does not involve the condition of leaving a Muslim [in their hands] or paying money, except under [pressure of] fear. There is no limit for the duration [of the truce, but] it is preferable that it should not exceed four months. But if the *imām* perceives [signs of] treachery [on the unbeliever's part], he has to repudiate the truce and warn them of this'.[1]

1. This stipulation was strictly adhered to in the history of the Sokoto Caliphate. To make *muhādana* or treaty of any kind with Europeans entering the country was a right of the Caliph in person. Examples of this are the commercial concession granted by Bello to Clapperton in 1824 and by 'Ali to Barth in 1853. It is, however, well-known that during the period of the scramble, some emirates, e.g. Nupe, and Adamawa did make commercial treaties with Europeans; but the superiority of the Caliph's treaties with Europeans over such treaties was clearly recognized. (For a full discussion, see R. A. Adeleye *Power and Diplomacy* chapter v.)

CHAPTER 45

ON THE LAWS CONCERNING *DHIMMIS*, THE COLLECTION OF *JIZYA* FROM THEM AND SO FORTH

71B I say, and success is from God: It is stated in the *Mukhtaṣar* explaining the contracting// of *jizya*: 'The agreement of *jizya* is a permission from the *imām* to an unbeliever whom it would be valid to enslave—adult, free-born, able [to pay *jizya*], living in society,[1] not having been freed by a Muslim—to dwell [in a Muslim land] other than Mecca, Medina and Yemen, [though such *dhimmis*] have the right to pass through [the Arabian peninsula] on payment of a sum of money. A person whose land was captured by force (*ᶜanwī*) has to pay [as *jizya*] four [gold] *dīnārs* or forty [silver] *dirhams* each year—at the end of it, according to the 'apparent' view (*ẓāhir*) [of Ibn Rushd][2] The amount is decreased for the poor to the extent of his ability to pay, but it is not increased for the rich.'

'The person whose land is occupied by agreement (*ṣulḥī*) has to pay as *jizya* what has been specified in the agreement, but in the absence of the amount being specified, he has to pay the same as the *ᶜanwī*. If anyone pays at the first rate [that of an *ᶜanwī*], it is the 'apparent' view that Muslims are forbidden to fight him.[3] [*Jizya* is to be collected] in a humiliating fashion. When the *dhimmis* profess Islam, they cease to pay [either type of] *jizya*, just as the provision of staple foods by them [for the Muslims] and their obligation to entertain a passing Muslim as a guest for three days becomes void on account of the the injustice [of the rulers].

'The *ᶜanwī* [having paid the *jizya*] is [treated as] a free-born man. If he dies or embraces Islam, only his land goes to the Muslims.[4] As to the *ṣulḥī* people, [the law is that they keep their land] if the *jizya* has been agreed upon as a lump sum. They can bequeath their property which may also be inherited. If the *jizya* has been levied *per capita* the land belongs to them except that if a man dies leaving no heirs, his land goes to the Muslims though up to one-third [of his property] may be disposed of by bequest. If the *jizya*, on the other hand, has been levied on the land or on both [the land and by *per capita* assessment] they can sell the land and *kharāj* is paid by the seller.'

A little further on he said: 'The *dhimmī* [either *ṣulḥī* or *ᶜanwī*] is not allowed to ride a horse or a mule [to use] a saddle or [to use] the main roads. He has to wear a dress that distinguishes him, and is to be punished for not wearing a girdle (*zunnār*). // He is [also

72A to be punished] for being drunk in public places, for making his religious tenets manifest, for talking irresponsibly[5] [to a Muslim or in the presence of one]. Wine is to be poured away [if a *dhimmī* brings it out in public] and the gong (*nāqūs*) is to be destroyed. A

1. This provision excludes monks, decrepit old persons and the like who live secluded from people.
2. In his preface to the *Mukhtaṣar*, Khalīl states that the expression *fi'l-ẓāhir* 'in the apparent view' refers to the view of Ibn Rushd (d.1126).
3. Ya'qūb b. Dati who had received a flag from the Shehu to establish the Caliphate's authority in Bauchi had to accept *jizya* from some pagan tribes of the Dass mountains. Modibo Adam of Yola, too, had to concede to the pagan practices of some tribes and treat them as *ṣulḥī* subjects by exacting tribute from them and granting them independence under his suzerainty (see R. A. Adeleye, *Power and Diplomacy*, p. 33) In other areas it was not uncommon for pagan groups to make peace with the Muslim *amirs* and pay *jizya* in order to practise their own un-Islamic beliefs (for a discussion on this, see D.M. Last, *The Sokoto Caliphate*, pp. 106–7 *et passim*).
4. The rest of his property including his *mawāt* land is kept by him or inherited by his heirs in case of his death.
5. The Arabic words used are *basṭ lisānihi*, lit. 'spreading or unfolding his tongue.'

dhimmi is considered to have repudiated the agreement if he (i) fights [against Muslims except in self-defence], (ii) withholds payment of *jizya*, (iii) rebels against [Muslim] legal decisions, (iv) rapes a free-born Muslim woman or (v) pretends to her [that he is a Muslim so as to marry her] (vi) informs [the enemy] about the weak points in the defences of the Muslims, (vii) insults a prophet with slander over and above what constitutes his unbelief..[1] [If he repudiates his pact in any of the above ways] he should be put to death unless he professes Islam[2] If a *dhimmi* goes forth to a non-Muslim territory [thus violating the pact] and is caught, he is to be enslaved provided no injustice had been done to him. But if an injustice has been done to him; he is not to be enslaved.'

Ibn Juzayy said in his *Qawānin*, enumerating their [the *dhimmis'*] twelve obligations towards us: '(i) They have to pay the *jizya* outright in a state of abasement. The *jizya* is four *dinārs* a year on every one who owns gold and forty *dirhams* on each of those who possesses silver. This amount is not to be increased for the rich nor decreased for the poor. Al-Shāfiᶜī said: "The *jizya* is one *dinār* per capita, but more than that is allowed if the agreement with them has specified it." Abū Ḥanifa and Ibn Ḥanbal said that it was twelve

72B *dirhams* for the poor, twenty-four for the man of moderate means, and forty-eight // for the rich. If a *dhimmi* accepts Islam, he is exempted from *jizya* even if only one day remains before the year's payment is due. (ii) They have to entertain as guests, for three days, those Muslims who pass by them. (iii) [They have to pay] one tenth of [the profit they gain on] trade they carry on outside the area in which they live; that is over and above the payment of *jizya*, which is of three types; (a) the tithe [one tenth of trade profit] which is the latter (b) *jizya* under compulsion (*ᶜanwī*) which is the one mentioned before the latter and (c) *jizya* of agreement (*ṣulḥī*) which is only decided on, as to its amount and on whom it may be levied by agreement. (iv) They should not build a church nor [if they have built one] leave it standing in an area built up by the Muslims if they conquered it by force. (*ᶜanwatan*). But if the Muslims entered it by agreement (*ṣulḥan*) and agreed to let the church continue to exist, that is allowed; nevertheless, to agree to let new churches be built is a matter of dispute. (v) They should not ride fine horses and mules, though they may ride donkeys. (vi) They should not use the main roads, but must be compelled to take the narrow streets. (vii) They must constantly wear some sign to distinguish them, such as

73A a belt (*zunnār*) // and be punished for not wearing it. (viii) They should not cheat the Muslims nor shelter a spy. (ix) They should not hinder the Muslims from stopping at their churches by day or night. (x) They should respect the Muslims; they should not beat a Muslim, nor abuse him nor take him into their service. (xi) They should hide their gongs and not practise any of their religious rites in public. (xii) They should not slander any prophet nor display their religious convictions openly.'

Then he said, enumerating our obligations towards them: '(i) We must let them settle in our land excepting the Arabian peninsula i.e. Al-Ḥijāz and Yemen. (ii) We should leave them in peace and safeguard them with a guarantee of protection for themselves and their property. (iii) We should not interfere with their churches, nor with their wine or pigs

1. i.e. if he says 'Muḥammad is not a Messenger of God', or 'Jesus is the Son of God', he is not to be punished because that [among other things] is a tenet of his belief. But if he says, for example, 'Jesus created Muḥammad or 'Poor old Muḥammad, he tells you he is in Paradise but he couldn't defend himself when the dogs bit him'! — then he is to be put to death, unless he becomes a Muslim. (*Mukhtaṣar*, p.119).
2. The penalty of death for the repudiator is unconditionally enforced when he slanders a prophet or when he rapes a free Muslim woman or deceives her. On other charges the death penalty is only carried out under certain conditions. (*Hāshiyat al-'Adawī*, ii, p. 445.)

unless they make them public. If they show their wine publicly, we should throw it at them, but if they have not shown it in public and a Muslim overturns it, he has to compensate them; it is [also] said that he should not compensate them. If any one of them brings out a pig in public he is to be punished. If they go forth [to non-Muslim territory] without having been subjected to oppression or harsh treatment [and are caught], they are to be enslaved, but not when they go forth because of oppression and harsh treatment.

73B Ashhab was of the opinion that they should not be enslaved at all".//

CHAPTER 46

ON THE DIFFERENCE BETWEEN FIGHTING BORN UNBELIEVERS AND FIGHTING APOSTATES

I say, and success is from God; al-Maghīlī said in his *Ajwiba*: 'The unbelievers are of three categories. (i) He who is an unmistakably born unbeliever like the Jew, the Christian and the Magian and others like them who have inherited outright unbelief from their forefathers. (ii) He who was a Muslim then apostatized quite positively, declaring that he had abandoned the religion of Islam and accepted another religion—a religion of unbelief. (iii) He who alleges that he is a Muslim but whom we find guilty of unbelief because he has committed such outward actions as none but an unbeliever would. There is no disagreement among the scholars that the children and wives of born unbelievers are to be made captives and their property divided. But there is disagreement concerning those who become unbelievers through apostasy. Ibn al-Qāsim said about a group of

74A Muslims, in a fortress, who had apostatized from // the religion of Islam to unbelief: "Their children and wives should not be made captives but their property is *fay'* for the Muslims". Ibn Rushd held that this was the correct thing to do when one considers that the apostates were originally free, adding: 'The majority of scholars and *imāms* of former times, followed Ibn al-Qāsim's ruling concerning the apostates."

Concerning the third category al-Maghīlī said: 'Their children should not be enslaved but should be compelled to accept Islam.' The *Mukhtaṣar* states: 'If a group of people apostatize and wage war, they are like apostates.' Al-Shabrakhītī said, explaining the meaning of this: 'The aged are called upon to repent and the young are compelled [to accept Islam], their property is kept in mortmain but their children should not be made captives. This is what ᶜUmar did, and what the majority of the scholars and *imāms* of former times followed, except for a few. Aṣbagh said: 'They [the apostates] should be enslaved together with their sons and children like the unbelieving belligerents. Upon my life! this was a matter in which ᶜUmar went against Abū Bakr concerning the Arab apostates whom Abū Bakr considered to have violated their pact so he killed the men and made the women and the young captives, dividing them and their property [like booty]. That was the action which Abū Bakr al-Ṣiddīq took."

74B The author [al-Shabrakhītī] // added: 'It seems that ᶜUmar did not act contrary to Abū Bakr but that he took that course of action to mollify the Muslims, because one would see his daughter and wife and his slave owned by another on his own level in lineage and honour and because of the hardship and changing of hearts that are known to be involved in such a case. It was said [also] that ᶜUmar did that because of [some] compensation. One has to interpret it in this way or in some similar way, otherwise it would contradict Abū Bakr's sentence—[an assumption] that cannot be valid.' But Ibn Rushd said that those on whom Abū Bakr had imposed the penalty of being enslaved were the very ones whose sentence was repealed by ᶜUmar. This contradicts the view that a *qāḍi* cannot repeal, following his judgement, the sentence another *qāḍi* has previously given; so learn from that. The answer was given that to rule that people should be taken captive does not conflict with the decision that they should be pardoned, for there is no incompatibility between them; and further, pardoning comes as a result of being captured and an effect

is different from its cause, but does not contradict it. Therefore an *imām* who has ruled that a people be taken captive then pardons them, is not giving two conflicting judgements. So the decision ᶜUmar made was only an act of grace toward them since he saw it to be the best thing. This is based on what the author and Ibn Rushd have said assuming that

75A Abū Bakr executed the sentence. But if he did not execute the sentence // against them, as Abū 'l-Rabīᶜ b. Sālim has said, then there is no problem because Hudhayfa b. al-Yamānī came to Medina with some captives, totalling three hundred soldiers and four hundred women and children. Abū Bakr tied them up in the house of Ramla b. al-Ḥārith, intending to put the soldiers to death. Abū Bakr died when they were still tied up and when ᶜUmar succeeded him, he set them free. Ibn ᶜAbbās related that Abū Bakr had consulted [the Companions]; the emigrants preferred either putting them to death or taking the highest ransom, whereas ᶜUmar took the view that they should neither be put to death nor ransomed. They remained bound until ᶜUmar succeeded and he released them without demanding ransom.'

Ibn al-Ḥājj said in his *Madkhal*; 'The land of the apostates differs from the land of the unbelievers in four respects: (i) no truce can be concluded with them permitting them to remain in their land; (ii) no peace treaty can be made with them which allows them to remain apostates on the payment of a sum of money; (iii) their men are not enslaved and their women are not to be taken captives; (iv) those who capture their property as booty cannot own it. The land of apostates also differs from the land of Islam in four respects: (i) Apostates can be fought both from the front and from the rear, exactly like polytheists; (ii) They can be killed when captured and when they are resisting; (iii) Their property

75B becomes *fay'* for the Muslims; (iv) // no marriage contract with them is valid.'

CHAPTER 47

ON THE DIFFERENCE BETWEEN THE FIGHTING OF REBELS [*BUGHĀT*] AND THE FIGHTING OF POLYTHEISTS

I say, and success is from God: Ibn al-Ḥājj said in his *Madkhal:* 'The fighting of rebels differs from the fighting of polytheists in thirteen respects: (1) They [the rebels] are to be fought with the intention of deterring them but not with any intention of killing them; (2) They may be fought when advancing but should be left alone when retreating; (3) If one of them is injured, he should not be killed off; (4) Captives from among them are not to be killed; (5) Their women are not to be taken captive; (6) The children are not to be taken captive; (7) Their property is not to be seized as booty; (8) No truce can be concluded with them allowing them to stay in their land; (9) No peace can be made with them allowing them to continue with their innovation[1] on payment of a sum of money; (10) No assistance can be sought from a polytheist in fighting against them; (11) Mangonels (*raʿʿāda*)[2] are not to be set up against them; (12) Their houses are not to be burnt down over them; (13) Their trees are not to be cut down.[3]

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1. For an explanation of this, see Ibn Juzayy's definition of rebellion *(baghy)* in the following chapter (48), p. 32.
2. Al-Kharashi, *loc. cit.*, equates *ra''āda* with *manjaniq* (mangonel). Al-Fayruzābādī, *(Qāmūs, art, al-'arḍ)* describes *'arrād* as 'something smaller than the *manjaniq.*' The word *ra''āda* is not recorded with this meaning and would appear to be a form arising from a metathesis of *'arrāda*, popularized by association with the idea of thundering (from *ra'ada*—to thunder). P. K. Hitti *(History of the Arabs*, p. 225) translates *'arrāda* by *ballista*, i.e. a machine for hurling projectiles based on the principle of the crossbow, as distinct from the mangonel, an elementary howitzer with a catapult action.
3. The most famous example of a *bāghī* (rebel) in the early history of the Sokoto Caliphate was that of 'Abd al-Salām b. Ibrāhīm, a Hausa-speaking Arewa. He had been a devoted disciple of the Shehu and he whole-heartedly participated in the early stages of fighting. But later, he aligned himself with *dhimmis* in an attempt to overthrow the Caliphate and assume the title himself. All peaceful means to pacify him were unsuccessful. He was requested to leave the country and settle anywhere else, but he refused. Finally he died of a wound sustained in battle. For an account of the conflict, see Muḥammad Bello, *Sard al-Kalām.*

   The differences between fighting of rebels and that of polytheists and belligerents cannot be fully exemplified by the case of 'Abd al-Salām. Nevertheless, the latter was given all the possible chances of persuasion and an amicable settlement (in contra-distinction to the treatment justified for unbelievers and to the belligerents). After 'Abd al-Salām, there were other, at least equally disturbing, rebellions against the Caliphate e.g. Bukhāri of Hadeija ca. 1848–1863 and Yūsuf of Kano 1893–1895.

CHAPTER 48

76A ON THE DIFFERENCE BETWEEN THE FIGHTING OF BRIGANDS [*MUḤĀRIBŪN*] AND THE FIGHTING OF REBELS

I say, and success is from God: Ibn al-Ḥājj said in his *Madkhal*: 'Fighting brigands is like fighting a band of rebels in all respects except five in which they differ from the rebels: (i) They may be fought while advancing and while retreating; (ii) It is permissable to fight them with the intention of killing them; (iii) Captives from among them may be imprisoned; (iv) Unlike rebels, they have to pay compensation for the blood they spill or property they damage after the end of the war; (v) Whatever *kharāj* or alms they have collected is considered as if it were taken by compulsion, so whoever took it must pay it back.' Ibn Juzayy said in his *Qawānīn*: 'They must first be admonished', i.e. the brigands, 'then they must be adjured thrice, in the name of God [to obey]; if they desist [well and good,] but if not, they should be fought and to fight them [in this case] is a *jihād*. If a brigand is killed, no retaliation may be taken; anyone killed by a brigand is a martyr. If a brigand is caught before he repents, there will be inflicted upon him the prescribed penalty, which is killing or crucifixion, or amputation of the hand and leg, or banishment.
76B As for killing and crucifixion, they are inflicted together; // the latter is done first according to Ibn al-Qāsim and second according to Ashhab. As for amputation, his right hand and left leg are to be cut off. Banishment is only for the free, and not for the slave; the man is exiled to another place and imprisoned there. Abū Ḥanīfa said that he should be imprisoned in his own land till he shows himself repentant. If a brigand commits homicide, he must be put to death no matter whether he is a free man or a slave or a *dhimmī*; the next of kin of the one killed cannot pardon the killer. If the brigand does not commit homicide, the *imām* can either put him to death or banish him or amputate his limbs at his own discretion, adopting whichever punishment he considers most fitting, but he should not choose the punishment arbitrarily. Al-Shāfiʿī said that the *imām* has no option, but the penalty is to be inflicted according to the crime; if a brigand kills, he has to be put to death; if he seizes property the limbs have to be amputated; but if he does not commit homicide or seize property, he has to be banished.' Ibn Juzayy went on 'If a brigand repents before he is caught, the penalty (*ḥadd*) should no longer be inflicted on him, but people may take retaliation for the injuries he has inflicted and he has to compensate for the property he has seized. The sentence imposed on him for seizing property is the same as that imposed on a thief, be he rich or poor. It is said that no *ḥadd* or retaliation is inflicted on him, but he has to compensate for the property. It is [also] said that
76A no *ḥadd* or retaliation is to be inflicted on him nor does he compensate // for property. But if he is found in possession of any of the property he has seized, it must be taken from him. The form of his repentance should take has not been agreed upon; it is said that his repentance should be by either (a) abandoning brigandage; or (b) coming to the *imām*; or (c) by both abandoning brigandage and coming to the *imam*.'

Then Ibn Juzayy said concerning the matter of rebellion (*al-baghy*); 'Rebels are those who are to be fought for [unorthodox] interpretation [of the *Qur'ān*]–the erring sects like the Khārijites and others, and those who revolt against the *imām* or refuse to come under his sway, or withhold a lawful due such as *zakāt* and the like. The rebels are first

to be called upon to come back to the truth. If they respond, that is to be accepted from them and they are to be duly spared; if they refuse they are to be fought and it is permissable to shed their blood.'

It is related in the *Miᶜyār*: 'Abū Muḥammad was asked [his opinion] about a man who was with other men on a foray. The men seized a certain thing in his presence, but he did not eat it nor did he make any use of it. Is he in any way to be blamed or not; what if he had not yet reached the age of puberty?' He answered, 'If he, being of age, was in the company of thieves at the time of theft or pillage or the like, he should, according to Mālik, compensate for all that was taken in his presence—as is the case with guarantors.[1] Some [scholars] have said that he should only be responsible for what he actually took. As for one who is not yet an adult, he should only be responsible, according to both opinions, for what he has taken himself.'

77B If you ask what // a man in dire need of food and clothes may [lawfully] take from another man's property, the answer is as al-Dāwūdī said: 'It is the minimum amount of clothing in which one is allowed to say prayers, sufficient to cover from the navel to the knee; and food enough for one day. An insolvent debtor ['s case is] different, because people's property was not obtained by him on the basis of pledge; so clothes fit for a man of his standing are to be left for him and enough food for him to live on for some days.' With regard to the author's words in the *Mukhtaṣar*; 'He may be left [enough money to obtain] the bare sufficiency of food and support essential [for his dependents] including an outfit of clothes for each of his dependents [covering the period up to the time] that he may be thought to become prosperous again,' al-Kharashī said in his commentary: 'This means that the ruler sells the property of the insolvent debtor on his behalf, and divides the money among all his creditors leaving for him his sustenance and that of his legal dependents, such as his wives, children, slaves, the slave-girls who have born children for him and the man who looks after his affairs until he is in more comfortable circumstances again, unlike a man who has collected his wealth in an illicit way as a consequence of wrong dealing and injustice. If such a man becomes insolvent, nothing should be left for him except sufficient to satisfy his hunger.'

It is reported, again, in the *Miᶜyār*: 'Ibn Abī Zayd was asked about the case of a man serving in the army of one of the oppressors. If it happened that some people were plundered [some property by the army of the oppressor] and the man obtained a small share

78A from it, // should he be responsible only for what he took himself or for everything the army seized? He answered, "If he was the commander of the army, and if what took place would not have happened had it not been for him, he should be responsible for the whole loss. But if he had no say in the army and no standing, he should only be responsible for what he himself took." This is said to be different from the case of brigands where each is responsible for [the actions of] the whole and has to answer for what the others have done, [even though] he has not taken any part in it. That is because an army can be in the right or in the wrong but brigands are [always] in the wrong.'

1. If a number of sureties have stood guarantee for a certain obligation, any one of them may be called upon to execute the whole obligation.

CHAPTER 49

ON THE LAW CONCERNING THE POSSESSIONS OF MUSLIMS STAYING WITH BRIGANDS BY THEIR OWN CHOICE

I say, and success is from God: The law concerning their possessions is to consider them public property. Abū 'l-Qāsim al-Burzulī mentioned in his book [the following incident]: 'The sultan gained mastery over a band of men from the deserts of *Ifriqiya*,[1] the majority of whom were men who had made money by illicit means. Our Shaykh, Ibn ᶜArafa, ruled that their property was not inviolable; this was based on an assessment of the majority of them until it could be verified who among them had made his money by legal means.' He said: 'This is because they transgressed by adding to the number of brigands and increasing their strength. Hence he did not grant them // the same inviolability as one who had kept oneself aloof and had not mixed with them.'

78B

This question was one of those which the Amir al-Ḥājj Askia put to Muḥammad b. ᶜAbd al-Karim al-Maghīlī. The wording of his question was: 'What is your reply concerning the Fulani and other brigands who have in their company men who allege that they are Muslims, yet they are living with the brigands, accompanying them when they are travelling and when they are encamped and joining them in all their affairs and concerns. Their horses are together raiding with them and fighting with them. They generally act in this way. Some of them are with these [brigands] but do not fight with them; they only live in their company. Now, when we raided these brigands, our army captured them together with the others and brought them to us and they said, "We are Muslims." We asked them, "How then do you join forces with these brigands?" They answered, "We cannot go away from them; we fear they will catch us and if we do escape from them, others will catch us because we are too weak to defend ourselves." We told them to keep themselves apart from them. Should we then abandon fighting the brigands lest we should harm those Muslims who are with them and have refused to part with them, or should we fight who are with them? Some scholars of our land have so confused me over this issue that I refrained from [fighting] them.' This is the end of the question. Al-Maghīlī's answer runs as follows: 'As for the brigands, they must be raided and it does not matter if some of those Muslims in their midst get killed, because they have wronged themselves by staying with them. What you do not know of concerning their persons and property before it gets destroyed is not to be blamed on you; and that which you know about before it gets destroyed, you should keep away from and return to its owner. That is in the case of their dwelling with them [the brigands] not by their own choice or if they do not raid with them or aid them: as for one who dwells with them by his own choice or raids with them and helps them in doing evil, he is one of them; in other words, kill him and seize his property and do not accept any repentance from him when God gives you the upper hand over them.'

1. *Ifriqiya* was the name the Arabs used for Eastern Barbary, (Roman 'Africa') the western part being al-Maghrib. The Arab geographers, however, differed as to the boundaries of *Ifriqiya*: according to Al-Bakri, it extended from the shores of the Mediterranean southward to the beginning of the land of the Negroes, the eastern boundary being Barqa and the western, Tangier (*Masālik*, p.21.). See also the article by M.Talbi. in *EI*(2).

79B

CHAPTER // 50

ON THE LAW CONCERNING THE POSSESSIONS OF MISSING PERSONS AND THEIR WIVES' ᶜ*IDDA*; AND THE LAW CONCERNING THE WASHING OF MARTYRS, SHROUDING THEM AND PRAYING FOR THEM

I say, and success is from God:[1] As for the possessions of missing persons[2] and their wives' ᶜ*idda*, Ibn Juzayy said in his *Qawānīn*: 'There are four types of case; a person lost (a) in Muslim territory; (b) in enemy territory; (c) while the Muslims are fighting in enemy territory and (d) while the Muslims are engaged in civil strife. As for a person lost in Muslim territory, then if his wife raises her case before the *qāḍi*, he will charge her with furnishing evidence for the marriage and her husband's absence. Then the *qāḍi* will seek information about the husband and write to other districts inquiring about him. If the *qāḍi* obtains information about him, then he is not to be considered missing. The man will be asked to return or to divorce the wife, and if he persists in doing harm [by neither returning nor divorcing his wife] she will be divorced from him. If no information is obtained about him, nor is it known whether he is alive or dead, the wife is given a period of four years from the time she reported her case, if the husband is free and two years if the husband is a slave. When that period expires, she must observe the period of ᶜ*idda*, as in the case of [a husband's] death; then she can marry if she wishes. Abū Ḥanīfa and al-Shāfiᶜī held that it is not lawful for the wife of a missing person to re-marry until

80A // his death is confirmed.

To this [rule] [3] there are four derivative principles. The first is if he has consummated the marriage, then he has to pay the cost of supporting her during the four years. If the marriage was not consummated and he has been absent for a long time, he has to bear the cost of supporting her, which is to be paid to her from his property, if she wishes. But if he has been absent for a short time, there are two opinions about it, [viz: that the cost of her support should be paid by him, or that it should not.]

The second principle is that if her husband returns during the [four year] period or during the ᶜ*idda* or later but before she has re-married, then she remains his wife. If he comes after she has re-married and the second husband has consummated the marriage, she belongs to the second to the exclusion of the first. But when the marriage has not been consummated, there are two opinions [viz: in favour of either husband].

The third principle is that if a husband is declared missing before the consummation of the marriage, the wife, is entitled to half of the dowry (*sadāq*)[4] ... This is the law concerning the man's wife. As to his property, it will be kept in mortmain and will not be inherited till his death is ascertained or a period of time in excess of his life expectation has elapsed. The upper limit of this period has been disputed; it is seventy years according to

1. The formula 'I say, and success is from God' is written only in the margin of ms.C.
2. After initial victories in the battles of Matankari, Konni, Tabkin Kwotto (1804), the jihādists suffered heavy casualties in the battles of Tsuntsua and Alwassa. According to Muhammad Bello (*Infāq*, pp. 87, 88) about 2,000 Muslims including 200 of those who memorised the Qur'ān by heart, perished at Tsuntsua and at Alwassa (*Infāq*, p. 100) also about 1,000 Muslims were killed.
3. i.e. concerning the case of a husband who has been traced.
4. Apparently Dan Fodio did not quote the fourth derivative principle as there is no mention of it in any of the four manuscripts.

the accepted opinion, some have said eighty, some ninety, some one hundred and Abū Ḥanīfa said one hundred and twenty. All these periods are calculated from the beginning of the man's life; if it happens that he is declared missing at the age of seventy, an addi-

80B tional ten years are allowed for according to the accepted opinion. // As regards a man lost in enemy territory, the ruling concerning him will be the same as that of a captive; his wife may not re-marry and his property may not be divided until a period of time in excess of his life expectation has elapsed, except according to Ashhab who puts him in the same category as a man missing in Muslim territory as regards his wife and property.

As for a man lost during fighting against the unbelievers, the law concerning him is the same as that concerning a captive, according to the accepted opinion. It is also said that it is the same as that of a missing person; again it is said that the law concerning his wife should be the same as that of a man who has been killed; she has to wait for one year, then observe the period of ᶜidda, after which she may marry. His property follows the law applicable to a missing man, under which the duration of his life is estimated at a period exceeding a putative lifetime.

As for a man who is lost during civil strife, there are two opinions concerning him. One holds that he is to be treated according to the law applicable to one killed; his wife has to observe the period of ᶜidda and his property is to be divided up. Then disagreement arose as to whether the period begins from the day of the battle or after a period of waiting equivalent to the period he would take to get back home after fleeing or being defeated; she must wait for a year if the place of his absence is far, but less than a year if the place is near. There was also disagreement as to whether or not she enters the period of ᶜidda during the time of waiting. The other opinion is that he is given a period

81A of respite of one year after which his wife observes the ᶜidda // and his property is divided up.

The *Mukhtaṣar* states: 'The wife of a missing man can bring her case before the *qāḍī*, the ruler or the *zakāt* collector; [1] if none of these is available, she can bring the case before the community of the Muslims. The free husband is given a respite of four years if his wife is continuing to draw her maintenance [from his property], while the slave husband is given half that period, beginning from the date on which he was last heard of. Then she observes the period of ᶜidda as she would if her husband had died.' He said further: 'A slave girl who has born [to a free-born husband] a child (*umm walad*), and his property as well as the wife of a captive and [the wife] of a man missed in the land of polytheism undergo no change of status for the period of a putative lifetime, which is seventy years. The two *Shaykhs*[2] opted for eighty years; judgement was also given on the basis of seventy-five years. If the witnesses disagree [in their evidence] about the husband's age [when he was reported missing], the younger age [is to be accepted]. Their evidence can be accepted on the basis of assessment. The inheritor has to make an oath [that this assessment is correct] at the time [of giving the evidence]. If a captive becomes a Christian [and it is not known whether it was by compulsion or choice], it is assumed

1. The Arabic words used here are *wālī 'l-mā'* which literally means 'the man in charge of the well or the place of water'. The *zakāt* collector was called *wālī 'l-mā'* because he used to collect the *zakāt* on livestock at the time they were gathered near watering-places.
2. The two Shaykhs are: Abū Muḥammad 'Abdullāh b. Abī Zayd (al-Qayrawānī) and Abū 'l-Ḥasan 'Alī al-Qābisī. See Shams al-Dīn Muḥammad Ibn 'Arafa al-Dusūqī's commentary on the commentary of Aḥmad al-Dardīr on Khalīl's *Mukhtaṣar*, (Cairo, 1934) ii p. 482.

to be by choice.[1] A wife whose husband is missed after a battle between Muslims, begins her period of ᶜ*idda* after the two armies have disengaged. Should there be a fixed period of respite [for the man after the end of the fighting] and should [the length of this period] be fixed [by the *qāḍi*] in his discretion? There are two opinions about this.[2] His property is then inherited [i.e. as from the beginning of ᶜ*idda*] as in the case of a man who was last heard of in a place where plague was spreading or during a period of plague[3]. The wife observes ᶜ*idda*, if the husband has been missed during fighting between Muslims and unbelievers, after waiting for one year and after inquiries have been made.'

81B Shaykh Abū Bakr b. ᶜĀsim al-Qaysī referred to this in *Tuḥfat al-ḥukkām* when he said://

> 'There is the opinion [that she should wait] for one year.
> From the time when it is despaired [of locating him] not from the time he departed.
> [Then] his property is divided up [on the assumption that he is dead] and the wife begins her ᶜ*idda* from then.
> That is the ruling that was followed in the past in al-Andalus; those who adopt this follow the right pattern.'

As for the law concerning the washing of martyrs, shrouding them and praying over them, Ibn Juzayy said in his *Qawānīn:* 'If a martyr has died on the *jihād* battlefield, he is neither washed nor shrouded nor prayed over. If he is killed wrongfully elsewhere or is taken alive from the battlefield when his wounds were not fatal, then he later dies, he is washed and prayed over, according to the accepted opinion, following al-Shāfiᶜī. Whoever is killed in the field during a battle against [rebellious] Muslims is washed and prayed over. But if the martyr is in a state of major ritual impurity, there is dispute as to whether he should be washed or not.' The *Mukhtaṣar* states: 'The only person who should not be washed is the martyr of the battlefield, even if [his death has taken place] in Muslim territory or [one who is killed when] not engaged in fighting, even though he is in a state of major ritual impurity, according to the most reliable opinion; but this does not apply when he is picked up alive even though his wounds are fatal, except in the case of one who is unconscious. He is to be buried in his clothes if they cover him [i.e. all his body]; otherwise [a pair of] *khuff*, [4] a hood, an inexpensive belt and a ring with an inexpensive stone should be put on him, but not a shield or weapon.'

1. In which case his Muslim wife is divorced from him and his property is kept in mortmain. If he becomes a Muslim again he takes them back but if he dies in apostasy, his possessions go to the Muslims. See al-Kharashī, commentary on the *Mukhtaṣar*, iii, p. 294.
2. Mālik said that she should observe the period of ʿ*idda* as from the day on which the two armies met. Some followed the obvious meaning of this and others followed Aṣbagh in saying that there must be a peiod before ʿ*idda* commences long enough to enquire and collect information about the husband. Al-Dusūqi *op.cit.*, ii p. 483.
3. In this case, his wife begins the ʿ*idda* at the end of the plague and his property is divided.
4. For *khuff*, see above, p. 107.

CHAPTER 51

ON PARDON, FORGIVENESS, CENSURING, AND CHASTISEMENT

I say, and success is from God: God has said: 'Keep to forgiveness, and enjoin kindness, and turn away from the ignorant'.[1] Again: 'And those who control their wrath, and are forgiving towards men; God loves the doers of good'.[2] Again: 'And let them pardon and forgive; do you not wish that God should forgive you?'[3] Again: 'And if you punish, punish even as you have been punished, but if you endure patiently, it is certainly better for the patient'.[4] Again: 'And whoever is patient and forgives—that surely is an affair of great resolution'.[5] And again: 'And the recompense of evil is evil the like of it; but whoever pardons and amends, his wage falls upon God'.[6]

ʿĀ'isha said, 'I have never seen the Prophet seeking revenge for an injustice done to him except that when any of the sacred ordinances of God was violated, nothing could stand up against his wrath.' The Prophet said, 'Be merciful to those who are on the earth; He who is in the heaven will be merciful to you.' The wise men have said, 'Authority cannot go with revenge nor leadership // with self-esteem and self-admiration. Be it known that it is better that you should pardon wrongly in one thousand cases than to punish wrongly in a single case.'

82B

If a transgressor wrongs you through his foolishness kill him by goodness not by evil. For a wrong-doer, if he has committed the error, will be encompassed by [divine] pardon and if he is innocent, he will be encompassed by [divine] justice. Al-Manṣūr once said that the punishment for the noble is to give them a hint [of their errors] and the punishment for the base is to speak out frankly. Accept an excuse except when the excuse comes from a person with whom one's sense of honour (*murū'a*) dictates the rupture of relations, or when your acceptance of his excuse would encourage him to do further evil or would actually help him in that. In that case accepting the excuse would amount to taking part in evil and pardon then becomes a source of corruption. Ibn al-ʿArabī with regard to God's word: 'And those who, when great wrong is done to them, defend themselves',[7] said in his *Aḥkām*: 'God has mentioned "defending against wrong-doing" in a laudatory manner. In another place He has mentioned "pardon for an offence" also in terms of praise. This is based upon the different circumstances, for if the wrong-doer shows forth his wickedness openly and is uncouth to people and does harm to the young and the old, then it is better to take revenge on him. Ibrāhīm al-Nakhaʿī said of the likes of such a man, // "It is detestable for the believers to humiliate themselves so that the sinners make bold with them. But if vengeance against such a wrong-doer may stir up civil strife or incite a man known to be docile to commit an offence, and the wrong-doer comes to seek forgiveness, then in this case pardon is better. Concerning such a case, there was revealed: 'Yet that you should pardon is nearer to

83A

1. Qur'ān, 7, v. 199.
2. Qur'ān, 3, v. 134.
3. Qur'ān, 24, v. 22.
4. Qur'ān, 16, v. 126.
5. Qur'ān, 42, v. 43.
6. Qur'ān, 42, v. 40.
7. Qur'ān, 42, v. 39.

piety' [1] and like verses."

It is stated in *Ḍiyā' al-khulafā'*: 'Know that God has established religious duties (*farā'iḍ*) and usages (*sunan*) and has forbidden prohibited practices; then He assiged fixed punishments for the violation of each aspect; He has forbidden that that limit [of punishment] be exceeded. So a person should not be put to death if he deserves [only] the cutting of limbs, imprisonment or chastisement; nor should one who deserves death [merely] have a limb cut off. Muᶜāwiya said, "I do not seek the aid of my sword in a case where my whip would be sufficient, nor my whip when my tongue would do." The Caliphs used to chastise men according to their status; so if any of those known to be men of honour should stumble, they would help him up again and let him off. Others would be treated according to their status and the nature of their error, for example to let a person stand up in a meeting where his equals are sitting down and that is his punishment; in the case of another, the collar of his garment would be torn lengthwise; in

83B another case // the turban would be removed from the man's head and he would be led round the mosque; another may merely be spoken to harshly.'

It is stated in the *Mukhtaṣar*: 'For disobeying God or [doing wrong to] a human being the *imām* punishes by imprisonment, reprimand or by letting one stand up [while others are seated in a gathering] (*iqāma*) or by removing the turban or by beating with a whip or the like, even though he might exceed the limit [of prescribed lashes] or cause death.' Al-Kharashī commented on this by saying: 'The punishment (*taᶜzīr*) can be by imprisonment, reprimand or by asking a person to quit a meeting or a celebration. In the case of some persons the turban can be taken off or the waist-wrapper untied. Some [scholars] interpreted *'iqāma'* as standing up on one's feet then sitting down; that is not what is intended, otherwise he would have used the word *'qiyām'*.[2] Some are punished [by being beaten] with a lash (*dirra*), a cane (*qaḍīb*) or with a stick, or beating the nape of the neck with the bare palms of the hand. If the discretion of the *imām* leads him to punish someone in excess of the prescribed penalty or to an extent that causes death, he can do so and no responsibility falls on him, since he did not intend death at the outset; rather he thought the person would survive.'

1. Qur'ān, 2, 237.
2. The point here is that the verbal noun *(maṣdar)* from the verb *qāma* (to rise) is *qiyām*; but Khalīl b. Isḥāq in his *Mukhtaṣar* used another verbal noun which is *iqāma* being the *maṣdar* from *aqāma* to raise and by extension 'to expel'. This is why some scholars thought that this type of punishment should be by asking the wrong-doer to stand up for a while instead of asking him to quit the place altogether.

CHAPTER 52

ON PREVENTING INJUSTICE AND SLANDER

84A I say, and success is from God: God has said: 'Deem not that // God is heedlessof what the evil-doers work: He is only referring them to a day when eyes shall stare [in terror].[1] *Ḍiyā' al-khulafā'* states: 'This verse is a sufficient warning to the oppressor and a sufficient consolation to the oppressed'. Kaᶜb [once] said to Abū Hurayra, 'It is mentioned in the Torah that the house of him who oppresses will be ruined.' Abū Hurayra replied, 'And that is [mentioned] in God's Book: "Those are their houses, fallen in ruins because of the evil they committed."[2] Thus oppression is the thing most conducive to the withholding of divine favour and the occurrence of catastrophes. Ibn ᶜAbbās reported the Prophet as saying, 'Beware of the imprecation of the oppressed because there is no barrier between it and God.' Abū Hurayra related that the Prophet said, 'He who has done an injustice to his brother either to his person or property, should make amends to him in the same measure as the injustice done before a day when [there will be] no *dirham* or *dīnār*. [For, on that day] if the wrong-doer has any good deeds [to his account] they will be reduced by the amount of the injustice he has done. If he has no good deeds [to his credit], some of the bad deeds of the one wronged will be transferred onto

84B him.' Saᶜīd b. Zayd said that he had heard the Prophet say, // 'He who unjustly seizes a span of land, [that piece will be enlarged into] seven earths[3] [and] made a collar for him.' Abū Jaᶜfar said, 'The meaning of that is that he will be changed into a tall and brave man, then that will be made a collar for him.' Anas reported the Prophet as saying, 'Give aid to your brother be he the oppressor or the oppressed.' He asked, 'O Messenger of God, we give him aid when he is oppressed, but how can we give him aid when he is oppressing?' He said, 'By stopping him.' Muslim related in his *Ṣaḥīḥ* that the Prophet had said, 'For him who seizes a Muslim's property with his right hand, God has made hell binding upon him and has made Paradise forbidden to him.' A man asked, 'Even if it is a small thing O Messenger of God?' The Prophet said, 'Even if it is a cane cut from an *arāk* tree.'

It is related that a king inscribed these lines of verse on his carpet:

Do not do injustice if you are in a powerful position
For doing injustice leads to regret.
Your eyes take themselves to slumber but the wronged one
Is sitting up invoking curses on you and God's eye does not sleep.
The imprecation of a wronged man will, undoubtedly, deliver you
Into the abode of degradation, humiliation and adversities.

Bilāl b. Saᶜīd said, 'Fear God with regard to a person who has none to help him except

85A God.' // The Prophet was reported as saying, 'God says: "My anger is greatest against a person wronging one who has no helper except Me."

As for preventing slander, there is God's word: 'If an ungodly man brings you tidings,

1. Qur'ān, 14, v. 42.
2. Qur'ān, 27, v. 52.
3. The idea comes from the fact that it is mentioned in the Qur'ān that God has created seven heavens and seven earths, (S. 65, v. 12).

verify it', to the end of the verse.[1] Ḥudhayfa said he had heard the Prophet say, 'No backbiter will enter Paradise.' And it is reported that the Prophet said, 'Shall I tell you who are the evil men among you?' They replied, 'Yes indeed, O Messenger of God.' He said, 'Among the evil ones in your midst are those who carry slander about, those who make mischief between close friends and seek out faults.' Ibn Qutayba related that the Prophet had said, 'Neither a *dayyūth* nor a *qallāᶜ* will enter Paradise.' A *dayyūth* is a man who brings men and women together [i.e. acting as a procurer] and a *qallāᶜ* is one who uproots men from an *amīr* ['s confidence], meaning that a slanderer ceaselessly defames a man strongly favoured by the ruler, until he is 'uprooted'.

When the Bishop of Najrān met ᶜUmar b. al-Khaṭṭāb he told him, 'O Commander of the Faithful, beware of the killer of the Three.' ᶜUmar asked, 'Who is he?' He replied, 'The man who comes to the *imām* // with false news and the *imām* accepts it; thereby he kills himself, his friend and the *imām*.' It is related that a man told tales of his neighbour to al-Walīd b. ᶜAbd al-Malik. Al-Walīd said to him, 'If you wish we will send [somebody to him] with you; [even] if you are telling the truth, we will hate you, but if you are telling lies we will punish you; however, if you wish, we will drop the matter now.' He said, 'Then let me go, O Commander of the Faithful.' How excellent it was of Alexander [the Great] when a slanderer defamed a man before him and he said, 'If you wish, we will take you to your friend on condition that you should speak in front of him, or if you wish, we will let you go.' He said, 'Then let me go.' Alexander said, 'We release you now; keep away from evil so that evil may keep away from you.'

85B

1. The complete verse is 'O believers, if an ungoldly man brings you tidings, verify it, lest you afflict a people in ignorance and then repent of what you have done.' Qur'ān, 49, v. 6. The reference is said to be to al-Walīd b. ᶜUqba who brought false news from the Jews at Khaybar, See al-Bayḍāwī, *Anwār al-tanzīl*, p.517

CHAPTER 53

ON PRACTICES WHEREWITH A STATE CANNOT SURVIVE[1]

I say, and success is from God: God has said: 'And when We desire to destroy a city, We command its men who live at ease, and afterward they commit abomination therein, then the Word [of doom] is proved true of it, and We destroy it utterly.[2]

It is stated in *Ḍiyā' al-khulafā'*: 'When God desires to destroy a state, He hands its affairs over to the extravagant sons of the rulers whose ambition is to magnify the status of kingship, to obtain their desires and indulge in sins. And God takes glory away from

86A them as a result of that. A man was once asked why // the rule of the Sāsānid dynasty had degenerated to the extent it had. He said that was because they had appointed low men to high posts. Concerning this, the sages said that the death of one thousand men of high rank is less serious than one man of low rank being elevated [above the station he is fitted for]; and it is a proverbial saying that states decline through giving preference to men of low rank. Al-Shāfi'ī said, "He who wrongs himself most is the base man. When he rises in status, he shuns his relations, ignores his acquaintances, fails to respect the nobles and displays arrogance towards the distinguished." A certain king was once asked, after he had been deprived of sovereignty, "What caused you to be deprived of your kingship?" He said, "Our pleasures kept us too busy to attend to our important tasks; we put confidence in the competent men among us but they gave preference over us to their personal conveniences and governors oppressed our subjects who then wished to be relieved of us."

One of the swiftest ways of destroying a kingdom is to give preference to one particular tribe over another, or to show favour to one group of people rather than another, and draw near those who should be kept away and keep away those who should be drawn near. A king was asked, after he had lost his throne, "What brought your rule to an end?" He replied, "Being intransigent in my views and neglecting to seek advice."

Other practices [destructive to sovereignty] are arrogance and conceit which take

86B away virtues. There are six qualities which cannot be tolerated in a ruler: lying, // envy, breach of promise, sharpness of temper, miserliness and cowardice. Another is the seclusion of the king from his subjects, because when the oppressor is sure that the oppressed person will not have access to the ruler, he becomes even more oppressive. The subjects keep loyal to only one ruler so long they have access to him, but when he secludes himself, there come into being many [other] rulers. O king, you have kept yourself secluded from your subjects, by means of chamberlains and doors and you have set up high mountains before them while God's door is open to petitioners; there is neither chamberlain nor door-keeper there. A kingdom can endure with unbelief but it cannot endure with injustice.'

1. This chapter seems to be based purely on the Shehu's assessment of nepotism, corruption and various forms of injustice within the Habe states. The whole question of tribalism and aristocracy among others, demanded urgent attention with the ascendancy of the Fulani aristocracy with the *jihād* and the political integration of diverse tribes and clans in one *Umma*. However, there was enough conflict of personalities and groups within the new aristocracy of the Caliphate to absorb efforts directed towards inter-tribal balancing in the establishment of the emirates. The upshot was that tribalism and arrogance characterised the government of the emirates and have survived to this century. Extensive patronage, which had also characterised the Habe regime, reappeared under the Caliphate and was to lead to various forms of corruption among the various groups of the aristocracy jockeying for power. This tradition was carried over to the colonial and post-colonial periods during which it could be observed that loyalty to 'the group' tended to blur ethnic divides without, however, obliterating them. This chapter is a clear warning against the divisive force of tribalism and nepotism amongst the *Umma*.

2. Qur'ān, 17, v. 16.

CHAPTER 54

ON QUALITIES COMMENDABLE BOTH FOR PRINCES AND OTHERS

I say, and success is from God: Among the qualities commendable both for princes and others is wisdom. The Prophet said, 'The best men are the wisest.' And on the authority of Abū 'l-Dardā' is reported the saying of the Prophet: 'O ᶜUwaymir, increase in wisdom and you shall be nearer to your Lord.' Abū 'l-Dardā' said, 'You are as dear to me as my father and mother; who will give me wisdom?' He said, 'Avoid what

87A God has prohibited and carry out what God has ordained, and // you will be wise. Then perform supererogatory good works, and you will increase in wisdom in this world and become nearer to your Lord.' A wise man is guided aright by his wisdom and fortified by his sound judgement, so what he says is sound and what he does is commendable, while an ignorant man is caused to go astray as a result of his ignorance; so what he says is unsound and what he does is objectionable. The merit of wisdom is that one can judge what one has not witnessed according to what one has witnessed. So he who can judge what he has not witnessed by what he has witnessed is called wise. Yet wisdom has its own defects which prevent it from being beneficial; these are caprice, envy, arrogance and the like.

For animals are of four types; angels who have wisdom with neither desire nor caprice; human beings who have wisdom, desires and caprices and likewise also are devils and demons; and beasts, which have only desires. The desires of devils have overcome their wisdom so they have adopted evil practices such as arrogance, conceit, loathing, boasting, pretence, envy, harmfulness and others. As for human beings and demons, for

87B some, such as the prophets and the messengers // and the saints, wisdom has achieved supremacy over desire, so they have joined the angels. And the wisdom of some was overcome by the permissible pleasures, such as food, dress, riding beasts, women, fine horses branded [with their mark] and cattle, so they joined the animals. The wisdom of some was overcome by unlawful pleasures such as arrogance, conceit, envy, deceit and so forth so they joined the devils.

Among the qualities commendable both for princes and others is religion, which is the fruit of wisdom and the guide to all good practices; he who has no religion has no wisdom nor any commendable quality.

Among the qualities commendable both for princes and others is learning (*ᶜilm*).[2] And know that the man most in need of [money to pay] expenses is the man who has the largest number of children, followers, retinue and friends; and all people derive fine qualities from the ruler and are indebted to him for laws, the checking of quarrels and settling of disputes. So, more than any other of God's creation he is in need of being acquainted with learning and gathering [knowledge] of the law. A man without learning

1. The Arabic word translated by 'desire' is *shahwa* (pl. *shahawāt*) which means the basic bodily appetites or cravings.
2. The early amirs or as they were actually called *nuwwāb*, were men versed in the Islamic Law and noted for their piety. They were called 'Malams' not kings. Their appointment was to extend the realm of the Islamic caliphate into the enemy territory and establish *Dār al-Islām* there. Numerous treatises were written by Sokoto leaders to advise them in the Islamic Law of administration. For a full discussion of this, see R.A. Adeleye, *Power and Diplomacy*, pp.40–51.

88A is like a country without inhabitants. The finest [qualities] in // a ruler, in particular, and in people in general, are the love of learning, the desire to listen to it and holding the bearers of knowledge in great respect—this is in fact the surest way for a ruler to be beloved of his subjects. On the other hand, if the king is devoid of learning, he follows his whims and leads his subjects astray, like a riding beast with no halter, wandering off the path and perhaps spoiling what it passes over. Thus, the upper classes have a greater need for association with scholars, for having friendship with the learned and the study of books of learning and wise sayings and reading the anthologies of the learned and the biographies of sages. For a ruler has set up himself to deal with people's natures, to settle their disputes and to undertake their government. All that requires outstanding learning, keen insight and extensive study. How would he get on if he had not made the necessary preparations and made himself ready for these matters? Other people do not lack those who oppose them, point out their shortcomings and hold contrary views. That helps a man to train himself and learn where the right way lies. A ruler, on the other hand, does not encounter any of these things because his high position cuts
88B him off from them, since the only people who associate with him are those who // glorify his status, conceal his drawbacks and praise him for what he does not possess. Their only reply to him is, 'The *amir* is right.'

Among the qualities commendable both for princes and others is clemency. God has said: 'Surely Abraham was clement, compassionate, penitent.[1] Again, addressing His Prophet: 'Pardon, then, in a gracious fashion'[2] A tradition says, 'God's love will surely come upon a man who is angered and shows forbearance.' One of the most clement of men was Ishmael to whom it was said: 'I have seen in a dream that I must sacrifice you; consider then, what thinkest thou? He said, "O my father! Do as you are bidden; you shall find me, God willing, one of the patient."[3] Aḥnaf said that he had found clemency of more help to him than men. He also said: 'Beware of the advice of scoundrels'. When he was asked who they were, he said, 'Those who view pardoning and clemency as shameful.'

Among the qualities commendable both for princes and others is generosity, which means that one should not find it a difficult matter to be liberal. God has said: 'And preferring others above themselves, even though poverty be their portion'.[4] The Prophet said, 'The generous man is near to God, near to men, near to Paradise and far
89A from Hell; the miser is far from God, far from men, far from Paradise and near // to Hell.' Know that generosity is of two types: the worldly type which comprises liberal giving, and bestowing, unselfishness and forbearance. God has said: 'And whoso is guarded against the avarice of his own soul, those are they who prosper'.[5] The sign of generosity is to not hoard [money] and to dislike amassing wealth and to spend money on friends while your heart is delighted at doing so. The other type of generosity is religious. This consists in being so generous with your soul that you wear it out for the sake of God, in worshipping Him and in willingly undertaking *jihād* in His path seeking nothing but His good pleasure. ᶜUmar b. al-Khaṭṭāb was asked 'Who is entitled to be called noble (*sayyid*)?' He said, 'The generous man.' Mūriq al-ᶜIjlī was very gentle in

1. Qur'ān 11, v. 75.
2. Qur'ān 15, v. 85.
3. Qur'ān 37, v. 102.
4. Qur'ān 59, v. 9.
5. Qur'ān, 59, v. 9.

doing favours to his brethren. He used to deposit ten thousand *dirhams* with one of them telling him to keep the sum till he returned. Then he would send word to tell him he was free to do what he liked with them.

Among the qualities commendable both for princes and others is kindness, which encompasses them all. God has said: 'Keep to forgiveness [O Muḥammad], and enjoin kindness, and turn away from the ignorant'.[1] It is to forgive one who wrongs you, to give to one who does not give to you and to be friendly to one who cuts off relations with you.

Among the qualities commendable both for princes and others is righteousness. God has said: 'And help one another to righteousness and piety; do not help each other // to sin and enmity'.[2]

89B

Among the qualities commendable both for princes and others is patience; know that patience is the halter of all the other good qualities. God has said: 'Surely the patient will be paid their wages in full without reckoning.'[3] Again: 'And perfectly was fulfilled the most fair Word of their Lord upon the Children of Israel, for that they endured patiently'.[4] Again: 'But if you are patient and godfearing—surely that is true constancy.'[5] Again: 'O believers, be patient and outdo all others in patience.'[6] Again: 'Seek you help in patience and prayer'.[7] And again: 'Surely, God is with the patient'.[8] There are numerous examples of this in the Qur'ān. The Messenger of God said, 'Patience is half of faith [especially] patience in the face of the first blow.' Patience is of two types: patience with what God has commanded and patience [to resist] what God has forbidden'.[9]

Among the qualities commendable both for princes and others is gratitude. God has said: 'Few are those that are thankful among My servants'.[10] Gratitude is of three degrees. Gratitude from the heart, from the tongue and from the bodily members. The first is to recognise that blessing comes from God alone. On this subject there is God's word: 'Whatsoever blessing you have, it comes from God'.[11] The second, which is gratitude from the tongue, is to // talk about that, as in God's Word: 'And as for your Lord's blessing, declare it'.[12] The essence of it is to praise the Beneficent for His beneficence. The third, which is gratitude from the bodily members, is to pay God's due with each member and to worship Him with all of them. On this subject there is God's Word: 'Labour, O House of David, in thankfulness'.[13]

90A

1. Qur'ān, 7, v. 199.
2. Qur'ān, 5, v. 2.
3. Qur'ān, 39, v. 10.
4. Qur'ān, 7, v. 137.
5. Qur'ān, 3, v. 186.
6. Qur'ān, 3, v. 200.
7. Qur'ān, 2, v. 45.
8. Qur'ān, 2, v. 153.
9. The patience enjoined by the Shehu here was particularly in evidence among the people of the Caliphate when the Europeans invaded the country. The whole attitude of the Caliphate was that of *taqiyya*. See R. A. Adeleye, 'The dilemma of the Wazir: the place of the *Risālat al-Wazīr ilā ahl al-'ilm wa'l-tadabbur* in the history of Sokoto' *JHSN*, iv, 2 (1968) pp. 285–312.
10. Qur'ān, 34, v. 13.
11. Qur'ān, 16, v. 53.
12. Qur'ān, 93, v. 11.
13. Qur'ān, 34, v. 13.

Among the qualities commendable both for princes and others is leniency and avoidance of harshness. God has said, 'And lower your wing [in kindness] to those believers who follow you'.[1] Again: 'Had you been hard and harsh of heart, they would have scattered from about you'.[2] The qualities of goodness are innumerable, so I have only arranged [the following] ten as a way of seeking blessing, after the manner of ᶜAlī b. Abī Ṭālib who says:

> Good morals are indeed purified [behaviour].
> The first is wisdom; second is religion;
> Third is learning; fourth is clemency;
> Fifth is generosity; sixth is kindness;
> Seventh is piety; eighth is patience;
> Ninth is gratitude and the tenth is leniency.'

1. Qur'ān, 26, v. 215.
2. Qur'ān, 3, v. 159.

CHAPTER 55

ON KEEPING SECRETS

90B I say, and success is from God: God has said, relating the story of Jacob: // 'He said, "O my son, relate not your vision to your brothers, lest they devise a plot against you."[1] When Joseph divulged his dream in the presence of Jacob's wife, she told his brothers, and this is how what befell him came about. It is related in a tradition, 'Seek the help of secrecy in achieving your aims.' Know that keeping secrets is a commendable practice for all mankind and a necessary quality for kings, and an essential duty for *wazirs*, courtiers and the royal retinue. ᶜAlī b. Abī Ṭālib said, 'Your secret is your captive so long as you do not tell it, but when you do, you become its captive.'

And know that those whom you can trust with secrets are more difficult to find and less numerous than those you can trust with property, and that to look after property is easier than keeping secrets. A man can take on a heavy burden and carry it alone, though he cannot keep a secret. He who keeps back his secret attains his end and keeps free of attack. Your secret is a part of your blood, so do not let it circulate in veins other than your 91A own; and if you tell it, then you have shed your blood. ᶜUmar b. ᶜAbd // al-ᶜAzīz said, 'Hearts are repositories and lips are their locks, and tongues their keys; so let every person guard the keys of his secrets.' It is said that the most patient person is he who can endure keeping his secrets without telling them to his friend who may, one day, become an enemy of his. ᶜAmr b. al-ᶜĀṣ said, 'I have never blamed a man who divulged a secret I told him, for if my heart could not contain it, then how much less could his.' It has been said:

> If a man tells his secret to another
> And comes to blame him for [divulging it], then he is foolish.
> If a man's heart is too small to hold his secret
> Then surely the heart of the man with whom he deposited it, is yet smaller.

It used to be said: The hearts of noble men are the tombs of secrets. A wise man once said, 'What you hide from your enemy let not your friend come across, if telling is inevitable, let it be to a friend who is capable of giving good counsel, sincere, faithful in keeping secrets and of sound judgement, religious and affectionate. Do not deposit your secret with one who asks for it, because the one who asks to have something deposited, is treacherous.' Be it known, too that to divulge the secrets of others is worse than divulging your own because [such a habit] shows itself to be one of two things; either breach of 91B faith, if you have been entrusted with it; or slander // if it is hearsay. A certain sage told his son, 'O my son, be generous with wealth in the right places and miserly with secrets towards all mankind.'

1. Qur'ān, 12, v. 5.

CHAPTER 56

ON A QUALITY THAT MAKES IT EASY FOR THE COMMANDER OF THE FAITHFUL AND OTHERS TO BE FRIENDLY WITH ALL PEOPLE

I say, and success is from God: Be it known that the quality which makes it easy for the Commander of the Faithful and others to be friendly with all people, is drawn from the Noble Qur'ān. God has said: 'No creature is there crawling on the earth, no bird flying with its wings, but they are nations like unto yourselves'.[1] God has confirmed the similarity between us and all other creatures. It is obvious that they do not look like us in shape, form and intelligence but [the similarity is] in behaviour; thus every human being has in himself some aspects of animal behaviour. So when you find someone departing from normal human behaviour, see which animal resembles him in this and class him with it and treat him as you would treat that animal. Thus you will have no trouble with him nor will he have any from you.

When you see a man barbarous in his behaviour, rough in nature and tough in body, the type of man against whose terrorization one is not secure, class him with the family of leopards. The Arabs say: 'More barbarous than a leopard.' When you see a leopard

92A you keep clear of it and you do not look for trouble with it, so treat such a // man in that way.

When you find a man with a tendency to steal furtively, class him with the monkey family who molest your saddlebags; avoid contention with him and guard your saddlebags.

When you find a man who assails the good repute of men, class him with the dog family, since it is characteristic of dogs to run away from those who stand their ground, and be the first to harm those who leave them alone; avoid contention with such a man when he attacks your good name and regard him like a dog barking at you. Do you not go ahead without bothering to curse it?

When you find a man who is by nature contentious, [the sort of man who] if you say 'yes' he says 'no', and if you say 'no' he says 'yes', then class him with the donkey family because it is a characteristic of the donkey to move away if you pull it near and to draw near if you push it away. You make use of a donkey but you do not bother to curse it or get rid of it.

When you find a man hunting for other people's faults, class him with the family of flies. A fly lands on the body and only looks for places where there is blood and uncleanliness; brush him off and pay no more heed to him than you would to a fly.

If you are afflicted by a sultan who assaults both properties and lives, class him with the family of lions and be on your guard against him and flee from him, as al-Nābigha[2] said, 'No peace can exist in the face of a lion's roar.'

If you are afflicted by a man given to cunning, class him with the family of foxes

92B // and leave him with his nature.

If you are afflicted by a slanderer who separates friends, class him with the family of the polecat which is an animal whose flatus is unbearable. The Arabs say when friends break up: 'A polecat broke wind in their midst so they dispersed'. Just as people drive

1. Qur'ān, 6, v. 38.

2. Nābigha of Dhubyān, a pre-Islamic poet of Arabia.

away this animal when it approaches them and prevent it from getting in among them, so also should a slanderer be driven out from among them or they should move away from him.

And when you see a man who does not give ear to learning and wise sayings, who flees from the gatherings of the learned and wise, a man who is used to giving ear to worldly tales and other superstitions and what goes on in the gatherings of the common people, then class him with the family of dung-beetles and scarabs (*jiʿlān*), because they delight in eating human excrement and are accustomed to the smells of filthy things. You only see them sticking to empty places and places where clothes are washed. They have an aversion to the smell of musk and flowers. They die when musk or flowers are cast on them.

When you meet a person whose characteristic is to grab at worldly things, and is never ashamed to seize upon them, class such a man with the family of the hawk by hiding your property away from him because he does not keep honour.

93A When you see a man who looks tender // and quiet, having laid his traps for hunting worldly things and devouring deposited wealth and trusts and widows' and orphans' wealth, class him with the family of wolves. A poet said [describing such a man]:

> A wolf is he; you see him saying prayers,
> When you pass him by, he bows in prayer
> He calls on God, his invocation mostly being
> 'What ails the victim, why does he not fall?
> O Mighty One, let him fall quickly [to me]
> My heart is almost split in twain'.

Be on your guard against such a man just as you are against wolves.

If you are afflicted with the companionship of a habitual liar, regard him as a dead man. A dead man does not tell you anything, so do not accept any information from a liar. Class him with the family of the ostrich which buries all its eggs in the sand and sits on only one egg on the surface of the ground with another egg under a layer of sand, while all the other eggs are right down at the bottom of the hole. When an inexperienced man sees it, he takes that one egg and goes away, or he uncovers the surface of the sand and finds the next egg and imagines that there are no more. But the man of experience, by his artifice, goes on digging until he achieves his end; he is not deceived by that first egg. Similarly, if you hear something from a liar, do not believe him; so either shun him

93B or search him till you unmask // him completely.

When you meet a man who persistently adorns himself as a bride, bleaching his clothes all the time, adjusting his turban, taking care that nothing should touch him, looking at his shoulders and having no interest besides preening himself, then class him with the peacock and keep away from him.

When you meet a malevolent man who never forgets minor mistakes, class him with camels and avoid him. The Arabs say: 'More malevolent than a camel.'

When you meet a hypocrite, concealing the opposite of what he reveals, class him with the family of the jerboa (*yarbūʿ*) which is a desert rat that lives in an underground hole called *nāfiqā'*, with two openings. It enters through one of the holes and goes out through the other. From this word (*nāfiqā'*) is derived the word for a hypocrite (*munāfiq*). Turn away from such a man. In short, the types of human behaviour are manifold; if you treat each according to what his type of behavour requires, you will have no trouble with him nor will he have any from you. God knows best.[1]

1. This chapter is summarised from al-Ṭurṭūshī's *Sirāj al-Mulūk*, pp. 187–189.

CHAPTER 57

ON THE PLACE OF REFUGE FOR THE COMMANDER OF THE FAITHFUL WHEN HIS CIRCUMSTANCES CHANGE AND ON WHAT MAY SET HIS AFFAIRS RIGHT

I say, and success is from God: [1] This can be [achieved] by the king summoning the scholars and enjoining truth and acting in accordance with it, by upholding the Sunna, by making justice prevail, and by sitting down on skin [rugs] to review torts. 94A He has to honour army commanders, kings // and their sons and make them generous promises, of high positions and provinces of equal status. Each one of them will get his own satisfaction from that. He has to lessen the taxes [levied for the upkeep] of the sultan and reduce forced labour; then he has to honour the notables of every tribe and the heads of each clan and enjoin them to be kind towards the learned, those who know the law by heart and the pious and ascetics. He should put at the head of them the best and most clement men from among them. He should not deprive a chief of his chieftaincy; rather he should make sure that every mighty man retains his position and cause everyone to occupy the place he is entitled to. Only then can he be the chief of chiefs. A poet[2] said:

> People do not prosper, leaderless, without chiefs
> And there can be no chiefs when the ignorant among
> them have power.

A king gains victory over his enemies according to his justice over his subjects and is defeated in his wars according to his injustice.

Seeing to the welfare of subjects is more effective than a large number of soldiers. It has been said that the crown of a king is his integrity, his stronghold is his impartiality and his wealth is his subjects.[3] There can be no triumph with transgression, no rule without learning of the law (*fiqh*) and no chieftaincy with vengeance. A ruler has to 94B accustom himself to patience and to gulp down the bitterness // of his subjects' aversion. Be it known O king, that you are not a god, so do not desire that people be loyal to you when they have not been loyal to God who created them and conferred on them all kinds of blessings and when they say unseemly things about Him and attribute to Him what is impossible for Him.[4]

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1. The formula 'I say, and success is from God' is written only in the margin of manuscript C.
2. The verses are by al-Afwah al-Awdī, a pre-Islamic poet of Arabia.
3. During the years of European occupation, the instructions given by the Caliph to his *amīrs* are closely reminiscent of this chapter. In several letters the latter were warned to guard their frontiers against the enemy. In one particularly typical letter written to the *amīr* of Gombe, 'Umar, the Caliph, stressed the necessity of seeing that his people remained one without division among them. He was to watch out for news of the Christians while in the meantime he was enjoined to see to the welfare of his people. (See National Archives, Kaduna, Kadcap, Box No. 38, letter No. 4).
4. This chapter is an abridgement of chapters 19,37 and 42 of al-Ṭurṭūshī's *Sirāj al-Mulūk*.

CHAPTER 58
ON THE WAY THE PROPHET ACTED (*SIRA*) WITH PEOPLE WHEN HE WAS SENT TO THEM[1]

I say, and success is from God: Know that the Messenger of God when he was sent to men, called on them to profess belief in the unity of God and demonstrated to them shining miracles in the face of which no man of sound judgement would doubt that he was the Messenger of God. But his people thought him a liar and severely persecuted him while he patiently endured it. They also severely persecuted those who believed in him to the extent of killing some of them and forcing some to migrate from Mecca to a place where they could profess belief in the unity of God and worship Him. When their persecution intensified, Gabriel came and said, 'O Muḥammad, God has ordered heaven, earth and the mountains to obey you.' He replied, 'I [wish to] grant a respite to my community for it may be that God will forgive them.' When the king of the mountains told him, 'If you like, I will cover them up with the two mountains of Mecca, (*al-akhsha-*
95A *bayn*)[2], he said, 'I grant them a respite hoping that God will // bring out from their loins those who will profess His unity.'

In spite of the offer his Lord gave him, he was not the first to resort to force against them; on the contrary, he used to present himself to the tribes, and during festive seasons saying, 'Who will believe in me? Who will help me so that I can convey the message of my Lord and thus secure for himself [a place in] Paradise?' The good fortune fell to the lot of the *Anṣār* who met him during the festive seasons and pledged allegiance to him. A man from the *Anṣār* would go forth from Medina to him, profess belief in him and return to his people and they would become believers on account of his belief until every house belonging to the *Anṣār* [in Medina] had in it a group of Muslims who practised their Islam in public. Then they [those believing *Anṣār*] met and said, 'How long will we leave the Messenger of God to be chased in the mountains of Mecca?' So seventy men set off [to Mecca] and said to him, 'We promise allegiance to you.' He said, 'You should promise allegiance to me on condition that you listen and obey, both when you feel active and when you feel lazy, and enjoin good and forbid evil, and rise [in resistance] for the sake of God and do not fear anyone's censure concerning [the things of] God and that you help me and protect me when I come over to you in the same way as you protect yourselves, your property and your children; [thereby] Paradise shall be yours.' They rose and paid allegiance to him in accordance with this. As'ad b. Zurāra who was the youngest of them took him by the hand and said, 'Gently, O people of Yathrib—
95B [Medina]. We // journeyed to him knowing that he is the Messenger of God and that to remove him [to Medina] today means estrangement with the [rest of the] Arabs, the killing of the best among you and your being bitten by the sword. Either you are a people who can bear that and God will reward you or you are a people who have fear in your cowardly hearts; so be clear about that for it will serve you better as an excuse with

1. This chapter and the following five chapters are meant to show the ideal way of life for a Muslim.
2. *Lisān al-'Arab*, the Arabic dictionary, attributes the statement to Gabriel instead of the 'king of the mountains'.

God.' They said, 'Keep that away from us O Asᶜad, for, by God, we shall never give up this homage (bayᶜa)'. When the Messenger of God emigrated, they gave him shelter, helped him, honoured him, followed him and followed the light that was sent with him. So they were the happy lot both in this world and in the hereafter because of the blessing of the homage paid to him, although they had been unbelievers until a short time before.

And you, woe unto you O oppressor! After God has perfected religion and brought to an end the Days of Ignorance, you want to reverse that! You are called the *imām* of the people or the deputy *imām* while you are a fiend or a deputy fiend! You want to imitate Korah[1] and increase trouble! God has said: 'Your wealth and your children are only a trial'.[2] It is stated in the *Ṣaḥīḥ*; 'The Messenger of God did not leave, on his

96A death, a *dirham*, or a *dīnār*, or a slave-girl: only his white mule // which he used to ride, his arms and a piece of land he gave out as alms for the wayfarer.' ᶜĀ'isha said, 'The Messenger of God never had his fill [even] of barley bread.' It is stated in the *Ṣaḥīḥ*: 'He used to remain hungry all the night tossing and turning from hunger; and that would not stop him from fasting the [following] day. Had he wished, his Lord would have given him the treasures of the earth, its fruits and all the comfort of life therein.'

An example of his humility is that when Isrāfīl said, 'O Muḥammad, your Lord has given you the option of being a Prophet as a king or as a slave'; He replied, 'Rather, a slave'. Abū Umāma related, 'The Messenger of God came out to us leaning on a stick; we stood up for him but he said, "Do not stand up, as the non-Arabs do, to glorify one another." He added, "I am only a slave; I eat as a slave eats and sit as a slave does." He used to ride on an ass and seat [another person] behind him, visit the destitute and sit with the needy; he complied with the request of the slave and sat among his Companions, sitting in among them as one of them wherever he found a space, with nothing to distinguish him from them. His ass's halter was a fibre rope and there was a pack-saddle on its back on the day of [the battle of][3] Banū Qurayẓa.

96B He rode, to perform pilgrimage, using a tattered saddle // on a female burden camel. He said then, 'O God, make it a blessed pilgrimage in which there is no showing off or [seeking of] fame.' This was after he had been granted victory over the earth. In his own house, he used to pursue the occupation (*miḥna*) of his family, i.e. serve them; he deloused his clothing, patched it, repaired his sandals, served himself, gave fodder to his camel used for water-carrying, swept the house, ate with the servant and kneaded dough with him and carried his own goods from the market, [a job] which he allowed nobody else to do for him. He never hid his joy from anybody. He himself served when entertaining a guest. Anas said, 'I served him for ten years and he never expressed displeasure towards me and he never said, "Why did you do this?" when I did something or "Why did you not do this?" when I failed to do something.' He used to accept the excuse which one made, be the first to shake hands with his friends and he never interrupted anyone who was speaking, nor made any displeasing remark to anybody. He never avenged himself save when the holy things of God were abused; then he would punish for the sake of God. Such sublime attributes of his, cannot be enumerated.

1. The story of Korah *(Qārūn)*, who so flaunted his enormous wealth that God had the earth swallow him up, is to be found in the Qur'ān, 28, vv, 76-82.
2. Qur'ān, 64, v. 15.
3. *Yawm* (plural *ayyām)* means a day or day of a battle. In the year 5 A. H. the Prophet besieged the fortresses of the Jewish tribe of B. Qurayẓa for twenty-five days until they were forced to submit (Ibn Hishām, *Sīra*, ii, 233 ff).

As for his abstinence, clemency, generosity, bravery, modesty, agreeable companionship, justice, staidness and the rest of his commendable qualities which cannot be enumerated, if we intended [to deal with them], they would fill// volumes. So consult ᶜIyāḍ's *Shifā'* and other biographies (*siyar*) concerning those things. ᶜĀ'isha said [once to him] 'Would that you had satisfied your hunger in this world?' He said, 'O ᶜĀ'isha, what has this world to do with me? My brother messengers who were endowed with resolution[1] endured patiently things [even] more severe than this. They passed away as they were; they went to their Lord who honoured their place of rest and rewarded them liberally. I find myself ashamed lest if I live in any comfort [now], I may on the morrow be put in a lesser position than they; and nothing is dearer to me than to join my brothers and my intimate friends.' It was only one month after that that the Messenger of God died.

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1. It is believed in Islam that the messengers who were endowed with resolution (*ulū 'l-'azm*) are five: Noah, Abraham, Moses, Jesus and Muḥammad. These five are the ones who encountered the greatest persecution from men.

CHAPTER 59

ON THE CALIPHATE OF ABŪ BAKR

I say, and success is from God: Know that when God took His Prophet's soul, the people were greatly stirred, the situation grew serious and the Arabs apostatized. The Companions were alarmed and ᶜUmar b. al-Khaṭṭāb in particular, since he grasped his sword by the hilt and said, 'If I hear anybody say the Messenger of God has died I will strike him with my sword.' Abū Bakr came up and entered upon the Prophet, uncovered his noble face, kissed it and wept saying, 'You are as dear to me as my father and my
97B mother, O Messenger of God, may God not let you die twice.' // Then he went out and said, 'Now, whoever has worshipped Muḥammad, let him realize that Muḥammad is dead; but whoever has worshipped God, let him know that God is Alive and shall never die. God has said: "Muḥammad is but a messenger: messengers have passed away before him. Why if he should die or be killed will you turn about on your heels? If any man should turn about on his heels, he will not harm God in any way; and God will recompense the thankful."[1] ᶜUmar said, 'I trembled so much so that I sank onto the ground'.[2]

The Companions regained their sense and then the people became excited, their hearts were confused and they longed for a leader on whom they could depend in running their affairs. The *Anṣār* assembled in the gallery (*saqīfa*) of the Banū Sāᶜida to appoint one of them as leader; so the Emigrants (*muhājirūn*) went to Abū Bakr and informed him of that, saying, 'Let us send for them.' He said, 'Should we not go to them in their place?' So he went forth and the Emigrants followed him and when they came to the *Anṣār* they exchanged words. The *Anṣār* said, 'Let there be an *amīr* from us and an *amīr* from you.' Then Abū Bakr expressed the religious point of view saying, 'O men of *Anṣār*, you know that we are the people of the Messenger of God and the core of the Arabs. The Prophet
98A said, "The *imāms* are from Quraysh // until the Hour is come." God called us the truthful ones in His Book when He said: "It is for the poor Emigrants, who were expelled from their homes and properties seeking God's grace and good pleasure, and helping God and His Messenger; those—they are the truthful ones."[3] And He called you the prosperous [when He said]: "And those who made their dwelling in the abode and in faith, before them, love those who have emigrated to them, not finding in their hearts any need for what they have been given and preferring [them] above themselves, even though poverty be their lot. And whoso is guarded against his own avarice, those—they are the prosperous".[4] He has commanded you to be with us in His Word: "O believers, fear God, and be with the truthful ones".[5] The Prophet told you, "You will experience selfishness after me; be patient until you meet me at the pool (*al-ḥawḍ*). [6] He told us in the last sermon he delivered, "I enjoin upon you goodness to the *Anṣār*, to accept what

1. Qur'ān, 3, v. 144.
2. For this story, see Ibn Hishām, *Sīra*, ii, pp. 655–6.
3. Qur'ān, 59, v.8.
4. Qur'ān, 59, v.9.
5. Qur'ān, 9, v. 119.
6. This tradition is related by al-Bukhārī and Muslim in their *Ṣaḥīḥs*. *Ḥawḍ* means a pool in Arabic but the reference here is to the particular *ḥawḍ* from which the Prophet will give water to his community on the Day of Resurrection.

the good among them do and overlook what the evil among them do." If you have any [right] to the affair [of leadership] you would not experience any selfishness nor would he have entrusted you to [our] charge. When they [the *Anṣār*] heard that, they remembered the truth and submitted to him and accepted his injunction. Then ᶜUmar hurried up to him first and said, 'O Abū Bakr, stretch out your hand for me to pledge allegiance to you. Abū Bakr stretched his hand and ᶜUmar swore allegiance to him and the other men did the same.

When [Abū Bakr] al-Ṣiddīq was elected caliph, he stood up and addressed [the people]
98B saying, // 'Now, O people, I have been put in charge of you, though I am not the best one of you, but the Qur'ān has been revealed and the Messenger of God has established the tradition (*sunna*), teaching us that it is good sense to be pious and it is foolish to be sinful. I regard the weak among you as the strongest in that I shall restore his rights to him and the strong among you as the weakest in that I shall take away from him the rights [he has usurped]. O people, I am only a follower and by no means an innovator so help me when I do well and set me aright if I deviate.'

Then al-Ṣiddīq called the Companions together and consulted them concerning fighting the apostates and those who had withheld the *zakāt*. The Companions advised him to delay the [problem of the] *zakāt* until the religion was firmly established and the emotional agitation of the Muslims had died down. He said, 'By God, if they were to withhold a [camel's] shackle from me, I would fight [them] for it.' ᶜUmar said to him, 'Unite the people and be kind to them.' He replied, '[What] a tyrant [you were] in the Days of Ignorance and [what] a coward now in [the days of] Islam! Revelation has ceased and the religion has been perfected; shall it come to an end while I am alive?'

Usāma b. Zayd had been sent by the Messenger of God to Syria with seven hundred warriors, and when he encamped at Dhū Ḥashā', the Messenger of God died and the Arabs apostatized. The Companions advised Abū Bakr to call them back. He said, 'By
99A God, besides Whom // there is no other god, if dogs dragged at the legs of the Prophet's wives, I would not call back an army which the Messenger of God had sent.' He ordered Usāma to march on, saying, 'Do you think you could allow ᶜUmar to stay behind with me so that I may keep company with him and take the benefit of his advice?' Usāma said, 'It is done', and marched on. And whenever he passed by a tribe intending to apostatize, they would say, 'Were it that these people had not adequate power, they would not have set forth in such force from there.' They met the Byzantines and defeated them, killing [many of] them, and returned safely. Abū Bakr then fought the forces of the apostates till they returned to God's religion. He sent armies to Syria and Iraq and conquered Yamāma. What Abū Bakr did was the correct thing, because if he had compromised with them over paying the *zakāt*, they would have grown strong and it would have been difficult to bring them back to obedience. He hastened to administer medicine before the disease took root; for if he had been lenient with them and they had learnt of their [the Muslims'] weakness, all those who wanted to would have apostatized and the split would have been beyond repair. ᶜUmar said [later], 'Had it not been for Abū Bakr, we would have perished.' Abū Hurayra said, 'By God, besides Whom there is no other god, if Abū Bakr had not been made caliph, God would not be worshipped.'

When God supported the religion through him and things went smoothly, he with-
99B drew from the [company of] people for three [nights] // and appeared to them once a day to say, 'I free you from the pledge of allegiance you promised me, so appoint any

one you like.' ᶜUmar would stand up [and say], 'We will not accept your resignation nor will we dismiss you. The Messenger of God put you forward, who then will drive you back?'

In spite of his strictness in matters of religion his being caliph did not change his customary humility. He went out one day with a cloak on his shoulder and a man offered to carry it for him. He said, 'Go away from me and do not beguile me.' He used to milk the neighbours' sheep for them and when he was appointed a caliph a slave-girl said, 'He no longer milks the milch-animals of our house.' He heard her and said, 'I certainly will milk them for you and I hope what I have assumed [i.e. the caliphate] will not change my previous behavour.' So he continued milking for them.

When a litigant came to him, he used to consult the Book of God. If he found in it something he could base his judgement upon, he would pass his judgement in accordance with a saying of the Messenger of God if he knew [an appropriate one]. If he could not find [an appropriate one], he would go out and ask the Muslims. Then he would say, 'Thanks be to God who has put among us those who preserve our religion for us'; or 'those who preserve for us the Sunna of our Prophet.' He used to take hold of his tongue

100A and say, 'This is the thing which gets us into trouble.' //

When he fell ill, he said, 'See what has been added to my wealth since I took office and send it to the caliph who comes after me. It turned out that [the excess] was a slave who had been in charge of carrying his children and a camel for carrying water. These were sent to ᶜUmar who said, 'May God have mercy on Abū Bakr; he has made things very difficult for those who will come after him.' He was asked during his illness, 'Shall we not call a physician to see you?' He said, 'He has seen me.' And when he was asked, 'What has he said?' he answered, 'He said, "I am the Doer of whatever I wish".[1] The cause of his death was the grief inflicted on him by [the death of] the Messenger of God, i.e. suppressed grief. He died on Monday evening between the sun-set and ᶜ*ishā'* prayer-times, eight nights remaining from *Jumādā* II, 13/23 August 634 at the age of sixty-three years.

It is stated in ᶜAbd al-Ra'ūf's *Kawākib:* 'Abū Bakr was most knowledgeable of all people about God and most afraid of Him, so much so that there came from his belly the smell of fried liver. He was extremely cautious about what he ate and what he drank and if he ate some doubtful things[2] and then realised it, he would vomit it profusely. He [once] drank some milk which had been earned by his slave, and on inquiring about it the slave told him "I foretold the future for some people, so they gave it to me." He

100B put his finger into his mouth and vomited so much that it was thought that his soul // would come out. Then he said, "O God, I apologise to You for what the veins have carried and for what has entered the intestines." It is stated in the *Iḥyā'* that he used to go six days without food; and he used to hold the tip of his tongue and say "This is the thing which has brought trouble on me."

He said, "There is no good in words which are not intended to seek God's pleasure, nor in wealth which is not spent in God's path, nor in a person whose ignorance overcomes his clemency, nor in a person who fears the censure of people concerning God."

He said, "If a servant [of God] becomes fascinated by any of the adornments of the present world, God will loathe him till he shuns that adornment."

1. See Qur'ān, 11, v. 107; 85, v. 16.
2. By a 'doubtful thing' is meant a type of food over which there might be doubt as to whether it was lawful to eat it or not.

He said, "We have found generosity in piety, wealth in certainty and honour in humility." He said, "Whoever has a taste of pure knowledge becomes preoccupied by it to the exclusion of all else other than God and has an aversion to all human beings."

He said, "Whoever abhors himself for God's sake, God will shelter him from His abhorrence."

He said, "Beware of boasting. What has a being who was created from dust and who will return to it again and be eaten up by worms to boast about?"

He said, "There is no good in good which is followed by Hell and no evil in evil which is followed by Paradise." He once entered a walled garden and lo! there was a bird in the shade of a tree; he heaved a deep sigh and said, "How blessed you are, O bird; you eat fruit, sit in the shade of trees and you will fly to no reckoning. Would that Abū Bakr

101A might be like you!" // When he was praised he used to say, "O God, You know myself better than I do, and I know myself better than they do; make me better than they imagine me, forgive me for what they do not know and do not take me to task for what they say." When he stood up to say prayers, he was like a cut-off piece of wood because of the submissiveness that overwhelmed him. He said, "I wish I were a tree which is eaten and cut for use as supports."

When he fell ill he was asked "Shall we call a physician for you?" He said, "He has seen me and said, "I am the Doer of whatever I wish." Then he summoned ʿUmar and admonished him till he made him weep, then he said, "If you keep my advice, there will be nothing absent which is dearer to you than death, which is undoubtedly coming to you; and if you neglect [my advice] there will be nothing absent which is more abhorred by you than death; and you cannnot escape it." Then he said to those present, "I enjoin

101B you by God,// in your poverty and destitution, to fear Him and praise Him as is fitting for Him and to ask Him forgiveness; surely He is ever-forgiving; and peace be upon him who follows the guidance." He died in the year 13 [634 A.D.] at the age of sixty-three according to the most correct [dating].'

CHAPTER 60

ON THE CALIPHATE OF THE COMMANDER OF THE FAITHFUL ᶜUMAR B. AL-KHAṬṬĀB

I say, and success is from God; Know that ᶜUmar was the first to be called the Commander of the Faithful, the first man through whom God strengthened Islam and the first to patrol by night (ᶜ*assa*), i.e. to go round by night to look after religion and the people. The people were so overawed by him that they avoided sitting in the open

102A spaces in front of the houses. When he heard of that, he assembled them // and sat on the pulpit at the place where Abū Bakr used to place his feet. Then he stood up, praised and lauded God as was befitting for Him and asked blessing for the Prophet and said, 'I have heard that people are overawed by my strictness and harshness and have said that ᶜUmar was strict with us while the Messenger of God was with us, then he was strict when Abū Bakr, not he, was our *wālī*. What [on earth will it be like] now that he has taken charge! Whoever said that is right. I was with the Messenger of God as his slave and servant. I was his drawn-sword until he sheathed me or let me[go my way]; I continued with him in this way till God took his soul while he was, thanks to God, pleased with me and I am happy on that account. Then Abū Bakr took over the affairs of the

102B people; I was his servant and helper, mixing my severity with his leniency // and being a drawn-sword till he sheathed me or let me [go my way]; I continued with him in this way until God took his soul while he was, thanks to God, pleased with me and I am happy on that account. Then I took over your affairs. Be sure that that severity has been doubled but it is directed against those who oppress the Muslims and transgress against them. As for men of peace and religion, I am more lenient towards them than they are one toward another. I do not let any person wrong another and transgress against him without putting that man's cheek on the ground and placing my foot on the other cheek until he submits to the truth, And you have the right [to demand] of me that I should not plunge you into dangers; if you are away on [military] expeditions, I will be the father of your dependents till you return. I say this and ask God to forgive me and you."

Saᶜīd b. al-Musayyib said, 'ᶜUmar was true, by God, to his word; he became more strict in places where strictness was required and more lenient where leniency was re-

103A quired; and he was the father of the dependents to the extent that // he would go to those wives whose husbands were away and ask, "Do you need anything that I can purchase for you, for I do not like you to be cheated in buying and selling." They would send their slave-girls and boys with him; he would enter the market followed by innumerable slave-girls and boys of the people and buy the things they needed. He would carry back the articles of those who had no servant and buy things from his own purse for anyone who had no money.'

When patrolling one night, he came across a woman with some weeping children around her and on a fire was a cauldron which she had filled with water. ᶜUmar drew near to the door and said, 'O slave-woman of God, what is making these children weep?' She said, 'Hunger and I am putting them off with this cauldron till they sleep, making them believe that there is something in it.' He began to weep, then he set off to the alms

103B store and took a sack and put in it some flour, // clarified butter, fat, dates, cloth and

dirhams till he filled it up. He then said to Aslam, his slave, 'O Aslam, lift this up on to me.' Aslam said, 'O Commander of the Faithful, I will carry it for you.' He said, 'No, Aslam. I will carry it because I am responsible for it in the Hereafter.' He carried it on his shoulder up to the house of the woman and put some flour, some fat and dates in the cauldron. He began to stir it with his hand and to blow [the fire] under the cauldron until he had cooked it for them. His slave, Aslam said, 'I saw the smoke coming out through his beard.' He then began to ladle it for them and feed them till they had eaten their fill. Then he left them.

Ṭalḥa went out one dark night and saw ᶜUmar enter a house and go out from it. In the morning, Ṭalḥa went to that house and found a crippled and blind old woman. He said, 'Why is it that this man comes to you by night?' She said, 'He has been taking care of 104A me // since such and such a time; he serves me and removes "harm" from me,' meaning dirt.

He sent out expeditions and God brought victory through his hand over Damascus, Rūm then al-Qādisiyyah, Ḥimṣ, Jalūlā', Raqqah, al-Rawḥān, Naṣībīn, ᶜAsqalān, Ṭarāblus and the neighbouring areas on the shores, Jerusalem, Ahwāz, Egypt, Tustar, Nihāwand, Iṣbahān, Fāris, Iṣṭakhr, Hamadān, the Berbers, the Burnus and others.1

His scourge was more awe-inspiring than al-Ḥajjāj's sword and the Persian and Byzantine kings stood in awe of him. In spite of that he remained as he had been before he became *wālī*, in his dress and appearance, his deeds and in his humility. He walked unaccompanied both at home and on travel, unchanged by being *amīr*. He never spoke arrogantly to any Muslim, he did not seclude himself [from the people], nor did he 104B favour // anyone concerning what was right because of his status; neither was the noble man hopeful of getting more than his due nor did the weak one despair of being dealt with justly. He feared the censure of no man concerning [the things of] God. He gave himself only an ordinary Muslim's share from God's property [i.e. the State Treasury] and ate of it only the bare sufficiency for his body. He wore a patched gown (*jubba*) of wool, some patches being of skin. He went round the market places carrying on his shoulder a whip with which he punished people, picking up *nikth* and date stones whenever he came across them and throwing them into people's houses for them to make use of them. *Nikth* is the thread which comes out of the weaving process and which can be used in weaving again.

He [once] put on a new shirt and sent for a *shafra*, i.e. a knife, and bade his son, ᶜAbdullāh hold together the sleeve of his shirt with his finger tips and cut it. ᶜAbdullāh 105A related that, having done what he had been bidden, he said, // 'Should I straighten it out?' He said, 'Leave it like that; I saw that the Messenger of God did so.'

Al-Aḥnaf b. Qays said, 'ᶜUmar had sent us on a military expedition to Fāris; we got hold of some things in the uninhabited part of Fāris and dressed ourselves up and came to ᶜUmar. He turned his face away from us and did not speak to us. That was hard for us [to bear] so we complained of it to ᶜAbdullāh his son, who said, 'He saw on you clothes which had not been worn by the Messenger of God nor by the Caliph after him.' We went to our houses, took off what we had worn and returned to him in the garments he used to see us in. He stood up for us and embraced us one after the other. We brought the booty to him and he divided it evenly among us. A type of sweetmeat (*khabīṣ*)

1. The term 'Rūm' is used in Arabic meaning 'the Byzantines' the 'Burnus', according to the Arab genealogists are one of the two great divisions of the Berbers, the other being the Butr. For the other place names and the conquests in general, see Hitti, *History of the Arabs*, pp. 139–68.

105B remained over and on tasting it he found that it tasted and smelt sweet so he said, // O Emigrants and *Anṣār*, the son among you will kill his father and the brother will kill his brother over such food.' He then ordered that it should be taken to the children of the Muslims who had been killed; then he went off without taking anything for himself.'

A client of ᶜUthmān b. ᶜAffān said, 'While I was with ᶜUthmān b. 'Affān at an estate of his at al-ᶜĀliya one hot summer day, he saw a man leading two young camels while the heat lay on the ground like a blanket. ᶜUthmān said, 'What is wrong with that man? Why did he not take a siesta in Medina so as to cool off there? When the man drew near, he said, 'See who it is.' I looked, and lo it was ᶜUmar. I said, 'It is the Commander of the Faithful.' ᶜUthmān stood up and put his head out of the door and, having been scorched by the hot wind, withdrew his head. When 'Umar passed in front of him, ᶜUthmān asked, 'What made you go out at such an hour?' He said, 'Two young camels belonging to the alms camels lagged behind and I wanted to take them to the *ḥimā* and I was afraid they would be lost and that God would hold me responsible for them.'

106A ᶜUthmān said, // 'O Commander of the Faithful, come in for water and shade and we will do that for you.' He replied, 'Go back to your shade.' I said, 'We have people who can do that for you.' He said, 'Go back to your shade,' and went away. ᶜUthmān said, 'Whoever wishes to see a strong man must look at this man.'

When hunger pressed the people hard, he felt powerless because of the people's [hardship]. Though barley was not acceptable to him, he began to eat it and when his belly rumbled, he put his hand on it and said, 'Rumble or not as you like, I have nothing else for you till God brings succour to the Muslims.'

He used to say, 'If a kid dies on the bank of the Euphrates, I fear that God will ask ᶜUmar about it.' One day he was blamed for not sleeping by night and he replied, 'What

106B has 'Umar to do with sleep? If I sleep by day, the subjects will perish and if I sleep // by night, I may cause myself to perish. How can I sleep with these two [things on my conscience?]'

And [what about] you, woe unto you, O oppressor? Why do you claim to be the *wālī* over the people, when you do not know what is being done in your own house, let alone outside of it. Nay, you DO know that but you do not care about it. Weigh yourself against what the *amīrs* of the Muslims have done, you will find a world of difference between you.

'ᶜUmar used to say, 'O God, I have become old, my power has diminished and my subjects have spread wide. Take me unto you without my being wasteful or excessive.' This was his invocation during the [three] days of immolation.[1] Before the end of Dhū'l-Ḥijja, Abū Lu'lu'a, the slave of al-Mughīra b. Shuᶜba stabbed him. ᶜUmar said, 'May God assail him! I enjoined an act of goodness through him.' Then he said, 'Praise be to God who has not caused my death at the hand of one who claims to be a Muslim.'

107A He died four nights before // the end of the month of Dhū'l-Ḥijja in the year 23/3 November 644, at the age of sixty-three—the same age as that of the Prophet.

It is stated in ᶜAbd al-Ra'ūf's *Kawākib*: 'He was the first who made public his Islam, according to what the distinguished *imāms* have related and thereby the religion became public. He overcame the plot of the idolators by the strong faith which held

1. *Ayyām al-tashrīq* 'the days of *tashrīq*', is the name for the three days of the *ḥajj* festival following 10th *Dhū'l-Ḥijja*, the 12th month of the lunar year. One meaning of the verb *sharraqa* is 'to cut in strips and dry in the sun.' The pilgrims cut the meat of sacrificial animals they kill on the 10th of *Dhū 'l-Ḥijja* and dry it in the sun during these three days, so they are called the days of *tashrīq*.

his heart, not heeding their large numbers nor caring for their resistance and the unity of their stand, depending on their Creator [i.e. God] and encouraged by the one who gave them the mortal blow and hated them [i.e. the Prophet], suffering what the Messenger suffered and patiently enduring hardships.

Al-Ghazālī said: "When he became caliph, he divorced a wife whom he loved, for fear that she might intercede for a wrong cause and he would consent so as to satisfy her. This [comes under the heading of] avoiding something unobjectionable for fear
107B that // something objectionable might result." His daughter entered [once] while he was dividing [the property of] the State Treasury and took a *dirham*. He got up and went after her, his cover falling from one of his shoulders; the young girl entered the house weeping with the *dirham* in her mouth. He put his finger in her mouth, took out the *dirham* and threw it into the *kharāj* saying, "O people, neither ᶜUmar nor his family deserve anything more than [other] Muslims, be they close or distant." He once delivered a sermon while he was a caliph, wearing a wrapper with twelve patches in it and a shirt with four patches, these being the only clothes he had. One day he was late going out to the Friday prayers; then he apologised, saying that he had been washing his garment (*thawb*) and that it was the only one he had. He used to take care of the blind, the chro-
108A nically ill, the decrepit // and the children by night; he carried water and wood to them by himself and removed dirt from them. Some people offered to help him in carrying and he would say, "Who will carry my sins for me on the Day of Resurrection?"

'He travelled as caliph to Syria after it had been conquered; when they came across a ford, he alighted from his she-camel and, carrying his pair of *khuff* on his shoulder and holding the halter of the she-camel, he began to wade across. Abū ᶜUbayda said, "O Commander of the Faithful, why do you do this? I would not like the Syrians to see you doing this." He replied, "If anybody else but you had said this, O Abū ᶜUbayda, I would give him a punishment that would be an example for the community. We were the weakest of people and God strengthened us with Islam. So by no matter what means we seek glory other than those by which God gave it us, He will render us weak."

'Among his outstanding sayings which reveal his true character are [the following]: We have found patience to be the best thing in our life... Whoever fears God does not
108B slake // his anger and whoever fears Him does not do what he wishes.... The *sayyid* [noble] is the man who is generous when something is asked of him; the one who is forebearing when abused and the one who is dutiful towards those who associate with him.' This is a summary from ᶜAbd al-Ra'ūf's *Kawākib*.[1]

1. It is clear from a comparison of the chapters on the early caliphs that the Shehu regarded 'Umar as the model caliph.

CHAPTER 61

ON THE CALIPHATE OF THE COMMANDER OF THE FAITHFUL ᶜUTHMĀN B. ᶜAFFĀN

I say, and success is from God: His name was ᶜUthmān both during the days of Ignorance and Islam[1] He was very rich and was kind towards the Muslims. When he became caliph, his humility increased and his kindness to the Muslims deepened. Al-Ḥasan said, 'I saw him lying on his side in the mosque with his wrapper under his head. A man would come and sit with him and then another and he was like anyone of them. He would rise with the marks which the pebbles had made, showing on his side.' He 109A offered princely food to the people and he himself ate oil and // vinegar. He had a slave to whom he said, 'I once pinched your ear, so take vengeance on me.' When the slave held his ear, he said, 'Harder! how excellent is vengeance in this world for there will then be no vengeance in the Hereafter.' One day he was called to go to some people on account of some sordid matter. He went to them, but found they had run away; he thanked God and manumitted a slave in sympathy towards them.[2] In his days goodness abounded and he used to fast all the time and worship God all the night long except for a short sleep at the beginning of the night.

ᶜUthmān performed outstanding acts of good. Ibn ᶜAbbās said, 'The people were stricken once by famine in the days of [Abū Bakr] al-Ṣiddīq; so they complained of the state 109B they were in to al-Ṣiddīq, who said God would // relieve them before nightfall. Then there came to ᶜUthmān one thousand camel loads of wheat and food from Syria. Merchants came to ᶜUthmān and knocked at his door. He went out to them and asked what they wanted. They said, "Sell to us so that we can ease the situation of the poor men of Medina." ᶜUthmān asked them to go in and there before them were one thousand heavy loads emptied out in ᶜUthmān's house. He asked, "How much profit will you give me?" They said, "Twelve for ten." He said, "I have been offered more." They said, "Fourteen for ten". He said, "I have been offered more." They said, "Fifteen for ten" He said, "I have been offered more". They asked, "Who has been offering you more, since we are [all] the merchants in Medina?" He said, "I have been offered ten *dirhams* for every *dirham*".[3] They said, "No." He said, "Bear witness, O merchants, I give it out as alms to the poor of Medina." Ibn ᶜAbbās added, 'As I slept that night I saw the Messenger 110A of God dressed in // a garb of light carrying a rod of light in his hand. I said, "You are as dear to me as my father and mother O Messenger of God, I have long been yearning to [see] you". He said, "I am in a hurry to [see] ᶜUthmān. He has given out as alms one thousand camel loads and God has accepted that from him and given him in return a bride in Paradise. I am going to ᶜUthmān's bride."

He equipped also the 'army of difficulty' (*al-ᶜusra*)[4] by giving nine hundred and fifty camels with their saddle blankets and pack-saddles; he gave fifty horses to complete

1. The reference here is to the fact that converts to Islam used to drop names with obvious pagan associations and adopt Islamic names. *'Abd Shams* (the slave of the sun) for example was changed to 'Abdullāh, but the third Caliph continued to bear the name 'Uthmān, which has no specifically pagan connotation.
2. Presumably he was relieved at not having to deal with an unpleasant matter.
3. i.e. offered by God, see Qur'ān, 6 v. 160, 'Whoever performs a good deed will receive ten times the like thereof.'
4. It was the Tabūk expedition which was led by the Prophet in person in the year 9 A.H./630 A.D. It was called the army of *al-'usra* because they were led in a hot time of the year when people would like to stay at home.

[the number] one thousand. He also contributed ten thousand *dinārs* towards equipping that army. He equipped the army twice.

During his caliphate Alexandria was conquered then Nisābūr, then Ifrīqiya, then Cyprus, then the coasts of Rūm (Asia Minor). Iṣṭakhr (Persepolis) was reconquered then Fāris followed,[1] then Jūr, and Fāris was conquered for the second time, then

110B Ṭabaristān, Kirmān and Sijistān on the sea, then // Ifrīqiya from the strongholds of Cyprus, then the coastlands of Jordan and then Merv. Then he was besieged in Dhū 'l-Ḥijja of the year 35/656 by men from Egypt and some Khārijites who conspired together to kill him; may God assail them! They besieged him in his house for one month. When the siege became hard on him ʿAlī came out of his house having the turban of the Messenger of God on his head and girt with his sword accompanied by his son al-Ḥasan and ʿAbdullāh b. ʿUmar, with some men from the Emigrants and the *Anṣār* going in front of him. They charged on the besiegers and having dispersed them went in to ʿUthmān. ʿAlī said, 'Peace be upon you, O Commander of the Faithful', and ʿUthmān returned the greeting. ʿAlī said, 'Give us the order to fight.' ʿUthmān said,

11A 'I beseech by God [every] man who recognizes that God has a right on him // and acknowledges that I have a right on him, not to shed for my sake [even] a cupping glass-full [of blood].' ʿAlī went out saying, 'O God, You know that we have done our best,' and entered the mosque. Those men broke in on ʿUthmān, who was fasting. He had slept during the day and seen in a dream the Messenger of God who told him, 'You will break your fast with us tonight.' He was killed that day and it was because of that [dream] that he stopped the people from fighting. He was killed on Wednesday in the late afternoon and was buried on Saturday before noon, eighteen nights having passed from the month of Dhū 'l-Ḥijja in the year 35[2] at the age of eighty-eight and some say ninety; God knows best.

It is stated in ʿAbd al-Ra'ūf's *Kawākib:* 'He used to sleep in the mosque while he was

111B caliph with nobody around him. He seated his slave behind him on his mount. // He preached wearing a coarse wrapper from Aden, which cost four or five *dirhams*. He offered princely food to the people and then entered his house to eat vinegar and oil. He never touched his penis with his right hand after embracing Islam. When he went past a grave, he wept till his beard was wetted. He never neglected looking at the Book every day saying, "This is the Book of my Lord and when a slave receives a book from his master, he has to look at it every day so as to act in accordance with it." Among his sayings are [the following].

'Everything has a disease and every blessing has a bane. The disease of this religion and the bane of this blessing are those who persistently hunt for other's faults and pick holes. They show you what you like and hide what you dislike.'

'The [sins] God curbs through the one in authority are more than those He curbs through the Qur'ān.'

'If our hearts were purified we would never have our fill of God's Word.'

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1. The original text reads: 'Iṣṭakhr the second... Fāris the first... Fāris the second.' First and second here mean conquering a place for the first time and when there was a set-back, to conquer it again. For 'Uthmān's con -
quests, see 'Izz al-Din b. al-Athir (1160–1234 A.D.), *al-Kāmil fī 'l-ta'rīkh*, (Cairo, 1301 A.H.), pp. 38–82.
2. i.e. 17 June 656.

CHAPTER 62

ON THE CALIPHATE OF THE COMMANDER OF THE FATHFUL ᶜALI B. ABĪ ṬĀLIB

112A I say, and success is from God: Know that when ᶜUthmān // was killed, the people came to ᶜAlī and knocked at his door saying, 'This man has been killed; the people must have a caliph and we do not know anyone who deserves it more than you.' He sent them away but they persisted so he said, 'If you insist, then allegiance to me must not be sworn in secret.' So they went to the mosque and he joined them and the Emigrants and the *Anṣār* were agreed on paying allegiance to him but some men held back. He did not force them and so there took place the Battle of the Camel[1] between him and ᶜĀ'isha. Then Muᶜāwiya and his Syrian supporters also held back and so there occurred the Battle of Ṣiffīn;[2] may God forgive them all! The Khārijites rebelled against him and he fought them and annihilated their forces. Ibn ᶜAbbās said, 'I have never seen a man more given to plunging himself into danger than ᶜAlī. I have seen him go out bare-headed, holding his sword in his hand, against a man clad in armour and kill him.'

112B He was extremely kind // to his subjects, modest, pious and firm in religious matters. He used to say, 'I am not a prophet nor do I receive any revelation, but I act according to the Book of God and His Prophet's practices as far as I can. Whenever I order you to obey, it is incumbent on you to obey, whether you like it or not.'

He used to go round in the market places and help porters carry the loads, reciting the following verse: 'That Abode of the Hereafter, We assign it to those who do not desire to exalt themselves in the earth nor make mischief. The [happy] issue is for the godfearing'.[3]

His food was barley flour; he would take a handful of it and put it into a bowl, pour water on to it and drink it. Muṭriq said, 'I saw ᶜAlī dressed in a wrapper and cloak carrying a whip just like a Beduin Arab. When he reached the market he said [to an old man], "O *Shaykh*, give me a good bargain of a shirt for three *dirhams*." But when the old man

113A recognized him, he [ᶜAlī] refused // to buy anything from him. He went to another and a third and so on until he came across a young boy and for three *dirhams* bought a shirt, the value of which was two *dirhams*. When the boy's father saw that, he returned one *dirham* to ᶜAlī who said, "Leave me alone; he sold me it with my consent and I bought it from him with his consent." He came across fruit-trees of citron (*utrujj*) and al-Ḥasan [his son] picked up a fruit. He snatched it from his hand and had it divided among the people [who were present]. Ibn al-Arqam related that his father had seen ᶜAlī selling a sword of his in the market, and saying, 'Who will buy this sword from me? By Him Who has split the seed and created the embryo, how often have I used it to keep battle away from the face of the Messenger of God; had I the price of a wrapper, I would not have sold it.'

113B One day he performed the morning prayers while he was rather sad, // and he slipped on his right side [and fell asleep] till the sun was the height of a lance on the wall of the mosque. He turned his hand over and said, 'I have seen the Companions of the Messenger of God but I do not see anything like them now. They used to wake in the morning dishevelled and dust-covered having passed the night prostrating to God and standing up

1. December, 656 A.D.
2. July, 657 A.D.
3. Qur'ān, 28, v. 83.

[in prayer] and reciting God's Book. When the morning came, they remembered God and their eyes shed tears till their clothes became wet. By God, the people have spent the night heedlessly.' He was never again seen smiling until Ibn Muljam struck him. The Prophet said, 'The most wretched fellow of the later folk is the one who strikes this ᶜAlī and wets this,' holding ᶜAlī's beard. When Ibn Muljam struck him, his sons, al-Ḥasan,

114A Ḥusayn, and Muḥammad gathered round him, and he advised them // at length, ending up as follows: 'O children of ᶜAbd al-Muṭṭalib, do not plunge into the blood of the Muslims saying that the Commander of the Faithful has been killed. Do not kill anyone except my killer; strike him once only and do not mutilate him'. He died at the age of sixty-five or sixty-three; God knows best.

It is stated in ᶜAbd al-Ra'ūf's *Kawākib*: 'ᶜAli kept *sawiq* [gruel of parched barley] in a sealed vessel from which he drank. He was asked, "Why do you do his in Iraq in spite of the abundance of food here?" He said, "I do not seal it out of miserliness, but I would dislike something foreign to get into it and something not good to enter my stomach." Ibn al-Tayyāḥ came to ᶜAlī and said, 'O Commander of the Faithful, the State Treasury is full of the yellow and the white."[1] Alī said, "God is Great", and called the people and distributed to them all that was in it saying, "O yellow, O white, deceive somebody else other than me! Take, take", until there was neither a *dinār* nor a *dirham* left

114B and he gave orders that the Treasury should be sprayed [with water] // and he performed two *rakᶜas* of prayer in it.

He used to patch his shirt and when he was asked why he did so, he said, "It humbles the heart and [induces] a believer to follow it as an example." He went one day to the market and asked who had a shirt for three *dirhams*. A man said he had and brought him one. He put it on and found out that it went further than his finger tips so he ordered it to be cut off. He sold his sword for the price of his wrapper and said, "By God, if I had its [the wrapper's] price, I would not have sold it [the sword]; how often did I ward off dangers with it from al-Muṣṭafā [the Prophet].'

Among his sayings are [the following]: "The world is a corpse and whoever desires it must endure association with dogs."

One day he bought some meat for one *dirham* and as he was carrying it, someone offered to carry it for him. He said, "The father of the dependents is more entitled to carry it."

He also said, "This world deceives, harms and passes away. God has not deemed it a reward for His friends nor a punishment for His enemies."

Again, "Life consists of two kinds of day, one for you and the other against you.

115A When it is for you, do not be proud, and when it is against you, // do not be annoyed."

Again, "What right has a human being to boast? His beginning is a sperm and his end is a corpse. He cannot sustain himself nor ward off his death."

1. i.e. gold and silver.

CHAPTER 63
ON THE CALIPHATE OF THE COMMANDER OF THE FAITHFUL AL-ḤASAN B. ᶜALI

I say, and success is from God: al-Ḥasan was paid homage to as caliph by the Muslims after his father's death. Muᶜāwiya held back [in Syria]. Then al-Ḥasan wrote to Muᶜāwiya giving over power to him on certain conditions. Muᶜāwiya replied that he would abide by the terms he had offered him. Al-Ḥasan was blamed for surrendering authority [the caliphate] to Muᶜāwiya and he said, 'I have chosen three things in preference to three others: unity rather than diversity; sparing blood rather than shedding it and solitude rather than company.' What the Prophet had said about him thus became true: 'This [grand-] son of mine is a chief by whom God will reconcile two great parties

115B of // Muslims.' The period of his caliphate was six months, which completed what the Messenger of God had said about the length of caliphate and that there would be thereafter a hard kingship, then tyranny and corruption in the earth. It became as the Prophet said.

It is stated in 'Abd al-Ra'ūf's *Kawākib*: 'Al-Ḥasan was a chief, generous, clement, a man of peace, staidness and open-handedness. He was averse to dissentions and used to give one hundred thousand (?) to a single man. He performed pilgrimage twenty-five times walking from Medina while the finest horses were being led in front of him. He was paid homage to as caliph after his father's murder and held the office for six months and some days and then went forth to fight Muᶜāwiya b. ᶜAbī Sufyān. Forty thousand men swore allegiance to al-Ḥasan to die [fighting] and when the two armies met, al-Ḥasan looked at them [and found them] like mountains of iron. He said, 'Shall these kill each other over a kingdom of this world! I have no need of it. He sent to Muᶜāwiya offering

116A to hand over authority // to him, not as a result of the paucity [of his forces] nor weakness, on condition that he should become the caliph after Muᶜāwiya and that he should pay his debts for him and not call to account any of the people of Medina, Ḥijāz and Iraq for what had happened during his father's days. Muᶜāwiya agreed to all that and they came to terms; thus was the miracle of prophethood shown and al-Ḥasan resigned the caliphate on those conditions. He left Kūfa and went to Medina and settled there. Marwān, the *amir* of Medina began to abuse him and abuse his father from the pulpit and elsewhere to such an extent that death would have been a lesser torture. He endured patiently expecting reward in the Hereafter.

Among his sayings are [the following]:

"Piety is utmost intelligence and sinfulness is utmost stupidity.

Generosity is to give out during both hardship and ease.

Clemency is the restraint of anger, and self-control.

Wealth is for the soul to be content with what is decreed for it, though it be small; and poverty is greed of the soul for everything. Discomfort is to speak about things that do not concern you."

Al-Shaykh Ibrāhīm al-Mawāhibī in his commentary on *Muqaddimat al-wuṣūl* quoted

116B his Shaykh // al-ᶜĀrif Abū 'l-Mawāhib al-Tūnisī as saying, "The first person to receive Pivotship of the universe (*quṭbāniyya*) from al-Muṣṭafā [the Prophet] was Fāṭima al-

Zahrā' throughout her life; then it passed to Abū Bakr then to ᶜUmar, then to ᶜUthmān, then to ᶜAlī, then to al-Ḥasan."

With the end of this quotation, comes the end of the book 'The Exposition of the Obligation of Emigration upon the Servants of God and the Exposition of the Obligation of appointing an *imām* and the Undertaking of *jihād*;' with praise to God and through His good help in the year *SH Á K R*(1221) of the Prophet's *Hijra* on Thursday the ninth of *Ramaḍān* 22 November 1806 at noon.

Praise be to God Who favoured us with the blessing of Faith and Islam and guided us aright by our master and lord, Muḥammad, may the most bounteous blessing and purest peace be upon him from God Most High.

Praise be to God Who guided us to this and we would not have been guided [aright] had not God guided us. Our final invocation is: Praise belongs to God, the Lord of the worlds. O God, show all encompassing mercy to the Community of Muḥammad through his grace, Amen.

APPENDIX

AUTHORITIES CITED IN THE *BAYAN*

Those marked with an asterisk are authors of works quoted directly by Dan Fodio. The works cited by him and the editions used in the collation are to be found in Section A of the Bibliography. Others in this list are persons whose views or legal rulings are cited indirectly through other sources or whose views are being cited generally without reference to a specific text. A few of the indirectly quoted authorities have proved difficult to identify with any certainty as they have only been referred to by brief forms of their names and these have had to be omitted from the present list. Each brief biographical note is followed by a reference to the relevant entry in the *Encyclopaedia of Islam* where this exists. Only where the form of the name in the entry in the *EI* differs in any way from the form given here has the title of the entry been given. References are also given to *GAL* or to Sezgin, *Geschichte des Arabischen Schrifttums* (vol. i. Leiden, 1967) where the author is of an early enough date to have been included. In cases where no reference exists in these sources or, in the case of Mālikī scholars, where the reference seems inadequate, the reader is referred to the appropriate entry in one of the following biographical works: Ibn Farḥūn, *Al-Dībāj al-mudhahhab* (Cairo, 1351/1932–3); Aḥmad Bābā, *Nayl al-ibtihāj* (on margins of Ibn Farḥūn); Muḥammad b. Muḥammad Makhlūf, *Shajarat al-nūr al-zakiyya fī ṭabaqāt al-Mālikiyya*, Cairo, 1349/1930–1.

*'ABDULLĀH B. MUḤAMMAD FŪDĪ
Brother of 'Uthmān b. Fūdī (d.1827). See M. Hiskett, Introduction to 'Abdullāh's *Tazyīn al-waraqāt* (Ibadan, 1963) and Introduction to this edition of the *Bayān*.

'ABD AL-ḤAKAM
Probably 'Abd al-Hakam b. 'Abdullāh b. 'Abd al-Ḥakam, Mālikī scholar and pupil of Ibn Wahb who died in prison in 853/4. *Nayl*, 166.

*'ABD al-MA'ĀLĪ (*sic*—for al-Muta'ālī ?)
From the citations in the *Bayān* he appears to have been the compiler of a collection of the *fatāwī* of al-Ujhūrī (q.v.), but he has not been positively identified.

ABŪ 'L-AṢBAGH 'ĪSĀ B. SAHL
Mālikī jurist of Andalusia and variously *qāḍī* of Tangiers, Miknāsa and Granada (d.1093–4). Author of *al-I'lām bi nawāzil al-aḥkām*. *Dībāj*, 181–2.

ABŪ DĀWŪD, Sulaymān b. al-Ash'ath al-Sijistānī
Compiler of a collection of *ḥadīth* (*Kitāb al-Sunna*) 817–88. Sezgin, i, 149.

ABŪ ḤANĪFA, al-Nu'mān b. Thābit
Scholar of Persian descent, 699–767, resident of Kūfa, whose legal views as expressed through the works of his pupils al-Shaybānī and Abū Yūsuf formed the basis of the Ḥanafī law school. *EI* (2); Sezgin, i, 409–18.

*AḤMAD BĀBĀ B. AḤMAD al-TIMBUKTĪ
Mālikī scholar of Timbuktu of Ṣanhāja origins, 1556–1627. Exiled to Marrākesh between 1593 and 1608 where he gained fame as a teacher and giver of *fatwās*. *EI* (1 & 2); J. O. Hunwick in *Bull. SOAS*, xxvii (1964), pp.568–93. *GAL* II 466, *S* II, 715.

*AḤMAD B. SA'ĪD
Author of an abridgement of al-Ubbī's *Ikmāl al-ikmāl*, a commentary on the *Ṣaḥīḥ* of Muslim. Untraceable; not known to either Brockelmann or Sezgin.

al-ĀMIDĪ, 'ALĪ b. Abī 'Alī al-Taghlibī
Theologian, philosopher and jurist, 1156/7–1233, at first a Ḥanbalite and later a Shāfi'ī, taught in Cairo and Damascus. *EI* (2); *GAL* I, 393, I, 678.

AṢBAGH B. al-FARAJ B. SA'ĪD
Māliki jurist of Egypt, pupil of Ibn al-Qāsim, Ibn Wahb and Ashhab (c.768-839). *Dībāj*, 97.

ASHHAB B. 'ABD al-'AZĪZ al-'Āmirī al-Qaysī
Pupil of Mālik and Ibn Wahb 762–819 who became the leading Mālikī teacher of Egypt after the death of Ibn al-Qāsim. Sezgin, i, 466.

'AṬĀ' al-KHURĀSĀNĪ
Traditionist and exegete, *c.* 670-757. Sezgin, i, 33.

*al-BARNĀWĪ, Muḥammad b. 'Abd al-Raḥmān
No positive information available on this author, but see Bivar and Hiskett in *Bull. SOAS*, xxv(1962), pp.118–35 for his poem *Shurb al-zulāl*.

al-BALQĪNĪ (or BULQĪNĪ)
Several scholars bore this *nisba*, but the one most probably cited in the *Bayān* is *Shaykh al-Islām* Sirāj al-Dīn 'Umar b. Raslān, 1324–1403, a Shāfi'ī scholar from Egypt who held various posts there and in Syria as *qāḍī* and *muftī*. *GAL* II, 93, *S* II,110.

*al-BAYḌĀWĪ, 'Abdullāh b. 'Umar
Shāfi'ī theologian and exegete, chief *qāḍī* of Shīrāz in Persia (d. 1286 or after). *EI* (2); *GAL* I, 416, *S* I,738.

al-BISĀṬĪ, Muḥammad b. Aḥmad al-Ṭā'ī
Mālikī jurist and teacher who was chief *qāḍī* of all Egypt for twenty years, 1359–1439/40. *Nayl*, 300–3.

*al-BUKHĀRĪ, Muḥammad b. Ismā'īl
The most celebrated of all compilers of *ḥadīth*, 810–70. His collection, *al-Jāmi' al-ṣaḥīḥ* is considered the most reliable. See *EI* (2); Sezgin, i, 115–34.

al-BURZULĪ, Aḥmad b. Muḥammad b. Mu'tall
Mālikī jurist and *muftī* of Tunis, pupil of Ibn 'Arafa, 1335–1438. *EI* (2); *GAL* II, 247, *S* II, 347–8.

al-DĀWŪDĪ, Aḥmad b. Naṣr al-Asadī,
Mālikī jurist and traditionist of Tripoli and Tlemçen (d.1011). Sezgin, i.482.

al-GHAZĀLĪ, Abū Ḥāmid Muḥammad b. Muḥammad
Theologian, jurist and mystic of Persian origin, 1058–1111, whose outstanding qualities earned him the title 'Proof of Islam' (*ḥujjat al-Islām*). *EI* (2); *GAL* I, 419, *S* I 744

al-ḤĀKIM al-NĪSĀBŪRĪ, Muḥammad b. 'Abdullāh
Traditionist, 933–1014, who compiled a collection of *ḥadīths* which he considered met the criteria of al-Bukhārī and Muslim but had been rejected by them. *EI* (2); Sezgin, i, 221–2.

*al-HAYTAMĪ, Shihāb al-Dīn Aḥmad, Ibn Ḥajar
Shāfi'ī theologian and jurist of Egypt whose *fatwās* were widely sought after, 1504–67. *EI* (2) art. Ibn Ḥadjar al-Haytamī; *GAL* II, 387, *S* II, 527.

IBRAHĪM B. YAZĪD al-NAKHA'Ī
Traditionist of Kūfa, d.713/475.

IBN 'ABBĀS, 'Abdullāh
Cousin of the Prophet who fought in many of the great conquests, considered the father of Qur'ānic exegesis, 619–87. Sezgin, i, 25–8; *EI* (2), art. 'Abd Allāh b. al-'Abbās.

*IBN ABĪ JAMRA, 'Abdullāh b. Sa'īd
Andalusian scholar and mystic who died in Cairo, 1300. His *Bahja* is a commentary on his own abridgement of the *Ṣaḥīḥ* of al-Bukhārī. *GAL* I, 372, *S* I,635; *Nayl*, 140.

*IBN al-'ARABĪ, Abū Bakr Muḥammad b. 'Abdullāh. Mālikī Jurist, traditionist and exegete of Seville, 1076–1148. EI (2); *GAL S* I, 663.

*IBN 'ARAFA, Muḥammad b. Muḥammad al-Warghamī
Mālikī jurist and *muftī* of Tunis, 1316–1401. *EI* (2); *GAL* II, 247, *S* II, 347.

*IBN 'ĀṢIM, Abū Bakr Muḥammad b. Muḥammad
Mālikī jurist of Granada where he became chief *qāḍī*, 1359–1426. *EI* (2); *GAL* II, 264, *S* II, 375.

IBN BASHĪR, Ibrāhīm b. 'Abd al-Ṣamad al-Tanūkhī
Mālikī jurist and traditionist, author of several works (d. 1132). *Dībāj*, 87.

IBN ḤABĪB, 'Abd al-Malik al-Sulamī
Mālikī jurist of Cordova who studied under Ibn al-Mājishūn, 790–852, author of *al-Wāḍiḥa*. *Dībāj*, 154–6; Sezgin, i, 468.

*IBN al-ḤĀJJ, Muḥammad b. Muaḥmmad al-'Abdarī
Mālikī jurist of Fez who spent most of his life in Cairo and died there (1336). *EI* (2), art. Ibn Al-Ḥādjdj; *Dībāj*, 327; *GAL* II, 83, *S* II, 95,

IBN ḤANBAL, Aḥmad
Theologian, jurist and Traditionist of Baghdad, 780–855, compiler of a massive collection of *ḥadith* (*al-Musnad*), whose views were codified by his disciples to become one of the four Sunnī law schools. *EI* (2); Sezgin, i, 502–9.

IBN al-JALLĀB, 'Ubaydullāh b. al-Ḥasan al-Baṣrī
Mālikī jurist and pupil of al-Abharī, a scholar resident in Baghdad (d.988). Sezgin, i, 477.

IBN JAMĀ'A Badr al-Dīn Muḥammad
Shāfi'ī teacher and *qāḍī* in Egypt and Syria, 1241–1333. *GAL* II, 75, *S* II,80.

*IBN JUZAYY, Muḥammad b. Aḥmad al-Kalbī
Mālikī jurist and exegete of Granada, 1294–1340. *EI* (2), art. Ibn Djuzayy (his son, the amanuensis of Ibn Baṭṭūṭa); *GAL* II, 264, *S* II, 377.

*IBN KATHĪR, Ismā'īl b. 'Umar
Shāfi'ī historian, traditionist and exegete of Damascus, *c.* 1300–73. *EI* (2); *GAL* II, 49, *S* II,48.

*IBN KHALDŪN, Walī 'l-Dīn 'Abd al-Raḥmān b. Muḥammad
Mālikī jurist and historian, 1332–1406, who after occupying various court posts in North Africa and Andalusia settled in Cairo where he held the office of Mālikī chief *qāḍi* on six separate occasions. He is generally regarded as one of the greatest (and last) intellects of the medieval Islamic world. *EI* (2); *GAL* II, 242, S, II, 342.

IBN LUBĀBA, Muḥammad b. 'Umar al-Qurṭubī
Mālikī jurist of Cordova and leading *mufti* of his day, d. 926. *Dībāj*, 245–6.

IBN al-MĀJISHŪN, 'Abd al-Malik b. 'Abd al-'Azīz
Scholar of Persian origin whose family was settled in Medina, c.769–between 827–830. Pupil of Mālik and *mufti* of Medina. *Dībāj*,153–4

IBN MARZŪQ al-ḤAFĪD, Muḥammad b. Aḥmad
Mālikī jurist and muftī of Tlemçen, 1364–1439. *EI* (2); *GAL S* II, 345.

IBN al-MAWWĀZ, Muḥammad b. Ibrāhīm
Pupil of Ibn al-Mājishūn and Ibn 'Abd al-Ḥakam and the most important early systematizer of Mālikī law, 796–882. Sezgin, i, 474.

IBN al-QĀSIM, 'Abd al-Raḥmān al-'Utaqī
The foremost student of Mālik and original compiler of the *Mudawwana*, later to be revised and added to by Saḥnūn, 749–806. Sezgin, i, 465–6.

IBN QUTAYBA, 'Abdullāh b. Muslim al-Dīnawārī
Theologian and man of letters who was for twenty years *qāḍī* of Dīnawār (in W. Persia—now ruined), 828–89. *EI* (2) art. Ibn Ḳutayba; *GAL* I, 120, *S* I, 184.

IBN RUSHD, Abū 'l-Walīd Muḥammad b. Aḥmad
Mālikī jurist, *qāḍī* and *imām* of the Great Mosque of Cordova, grandfather of the philosopher of the same name (Averroes), 1058–1126. *Dībāj*, 278–9; *GAL* I,479, *S* I, 662.

IBN SHA'BĀN, Abū Isḥāq Muḥammad b. al-Qāsim
Mālikī jurist and head of the Mālikī school in Egypt in his day (c.888–966), author of a number of works on jurisprudence, but not recorded by Brockelmann or Sezgin. *Nayl*, 248–9.

IBN WAHB, 'Abdullāh al-Fihrī al-Qurashī
Pupil of Mālik, traditionist and exegete, 743–812. Sezgin, i, 466.

IBN ZARQŪN, Muḥammad b. Sa'īd al-Anṣārī
Mālikī jurist of Seville, *qāḍī* of Shilb (Silves in S. Portugual) and Ceuta, 1108/9– 1190.*Dībāj*, 285–6

IBN ZURB, Muḥammad b. Yabqā
Mālikī jurist and author, *qāḍī* of Cordova (d.943). *Dībāj*, 268–9.

'ĪSĀ B. DĪNĀR
Mālikī jurist of Cordova who studied under Ibn al-Qāsim and became *qāḍi* of Toledo (d. 827–8). *Dībāj*, 178–9.

al-IṢFAHANĪ, Muḥammad b. 'Abd al-Raḥmān
Shāfi'ī exegete and theologian who taught in Damascus and Cairo, 1292–1348. *GAL* II,110, *S* II, 137.

*'IYĀḌ B. MŪSA al-YAḤṢUBĪ, known as al-Qāḍi 'Iyāḍ
Māliki traditionist, historian and jurist, sometime *qāḍi* of Cordova and Ceuta, 1083–1149. *EI* (2); GAL I, 369, S.I, 630.

*al-JAZĀ'IRĪ, Aḥmad b. 'Abdullāh al-Zawāwī
Māliki scholar and mystic of Algiers (d.1497). *GAL* II, 252, *S* II, 356; *Nayl*, 82–3.

al-JUWAYNĪ, Abū 'l-Ma'āli 'Abd al-Malik, *Imām al-ḥaramayn*
Shāfi'ī jurist and theologian from Nīsābūr (N.E. Persia) and a leading exponent of the Ash'arite school, 1028–85. *EI* (2) art. al-Djuwaynī; *GAL* I, 388, *S* I, 671.

al-KHAFĀJĪ, Aḥmad b. Muḥammad
Shāfi'ī jurist, poet and philologist, variously *qāḍi* of Cairo and other localities in the Ottoman empire (d.1626). *GAL* II, 285, *S* II, 396.

*KHALĪL B. ISḤĀQ al-JUNDĪ
Māliki *mufti* of Cairo and teacher at the Shaykhūniyya (d.1365 or 1374). *EI* (1); *GAL* II, 83, *S* II, 96.

*al-KHARASHĪ, Muḥammad b. 'Abdullāh
Chief teacher and *mufti* of the Māliki school in Egypt (d.1689). *Shajara*, no. 1234; *GAL* II, 318, *S* II, 438.

*al-KHĀZIN, 'Alī b. Muḥammad al-Baghdādī
Traditionist and exegete, librarian of the Sumaysiṭiyya in Aleppo, 1279–1346. *GAL* II, 109 *S* II, 135.

*al-KUNTĪ, al-Mukhtār b. Aḥmad al-Wāfī
Māliki scholar and *ṣūfī* of the nomadic Kunta tribe of the Niger Bend, 1729–1811. See J.R. Willis in Ajayi & Crowder, *History of West Africa*, ch. 12 esp. pp.468–72; Batran, Ph.D. thesis (Univ. of Birmingham), 1971.

*al-LAQQĀNĪ, 'Abd al-Salām b. Ibrāhīm Māliki jurist, 1563/4–1668 and *Shaykh* of the Māliki scholars of Egypt in his day. *Shajara* no. 1176.

*al-LAQQĀNĪ, Burhān al-Din Ibrāhīm. b. Ḥasan
Māliki jurist and teacher in Al-Azhar whose *fatwās* were highly regarded (d.1631). *Shajara*, no. 1113; *GAL* II, 316, *S* II, 436.

*al-MAGHĪLĪ, Muḥammad b. 'Abd al-Karīm al-Tilimsānī
Māliki scholar of Tlemçen who also resided in Tuwāt, Kano, Katsina and Gao. Died in Tuwāt, 1504. *Nayl*, 330–2; Batran in *JAH*, xiv, 3 (1973), pp. 381–94.

*al-MAḤALLI, Muḥammad b. Aḥmad
Shāfi'ī teacher of jurisprudence in Cairo, 1389–1459. *GAL* II, 113, *S* II, 140.

MAḤMŪD B. 'UMAR B. MUḤAMMAD AQĪT
Māliki scholar of Ṣanhāja stock, 1463/4—1548, *qāḍi* of Timbuktu for fifty years. *Nayl*, 343–4.

MAKHLŪF B. 'ALĪ B. ṢĀLIḤ al-Balbālī
Māliki scholar who studied in Walāta and the Maghrib and later taught in Kano and Katsina (d. after 1534). *Nayl*, 344.

MĀLIK B. ANAS B. MĀLIK al-AṢBAḤĪ
Traditionist and jurist whose teachings became the basis of the Māliki law-school, (c.712–96) Sezgin, i, 457; *EI* (1).

*al-MĀLIKĪ, Abu'l-Ḥasan 'Alī b. Nāṣir al-Dīn Muḥammad al-Shādhilī
Commentator of numerous works of Mālikī jurisprudence, theology, mysticism and grammar. Lived and died in Cairo, 1453–1532. *Nayl*, 212; *GAL* II, 316, *S* II. 434.

*al-MAQQARĪ, Aḥmad b. Muḥammad al-Tilimsānī
Mālikī traditionist, theologian and historian with strong literary interests, c. 1591–1631. *EI* (1) art al-Makkarī; *GAL* II, 296, *S* II, 407.

*al-MAWĀHIBĪ, Ibrāhīm b. Maḥmūd
Ḥanafī scholar and follower of the Shādhilī way who died in Egypt, 1502/3. *GAL* II, 123, *S* II, 153.

al-MĀWARDĪ, 'Alī b. Muḥammad
Shāfi'ī jurist of Persian origin, *qāḍī* of Ustuwa near Nīsāpūr (d.1058). *EI* (1); *GAL* I, 386, *S* I, 668.

al-MĀZARĪ, Muḥammad b. 'Alī, *al-Imām*
Mālikī jurist of Sicillian origin settled in al-Mahdiyya (Tunisia), 1058–1141. *Dībāj*, 279–81; *GAL S* I, 663

*al-MINNĀWĪ (or al-MUNĀWĪ), 'Abd al-Ra'ūf b. Tāj al-Dīn Shāfi'ī traditionist and *ṣūfī* of Cairo, 1545–1621. *GAL* II, 305, *S* II, 417.

*MUSLIM B. al-ḤAJJĀJ al-NĪSĀBŪRĪ
Compiler of a major collection of *ḥadīth* (*Al-Ṣaḥīḥ*), 817 or 821–875. See *EI* (1).

*al-NĀBULSĪ, 'Abd al-Ghanī b. Ismā'īl
Palestinian scholar and mystic, 1641–1731. Member of the Naqshbandiyya and Qādiriyya orders, travelled extensively and wrote a very large number of works. *GAL* II, 345, *S* II,473.

al-NASĀ'Ī Aḥmad b. 'Alī
Compiler of a collection of *ḥadīth* (*Kitāb al-Sunan*), 830–915. His collection is one of the revered 'six books' of Tradition. *EI* (1); Sezgin, i, 167–9.

*al-NASAFĪ, Abū 'l-Barakāt 'Abdullāh b. Aḥmad
Ḥanafī jurist and theologian from Turkestan (modern U.S.S.R.), who taught in Kirmān (d.1310). *EI* (1) art. al-Nasafī (III); *GAL* II, 96, *S* II, 263.

*al-NAFRĀWĪ, Aḥmad b. Ghunaym
Mālikī scholar of Egypt and commentator on the *Risāla* of al-Qayrawanī. Probably died in 1713 (*Shajara*, no. 1239—read 1125 for 1225 A.H.), but title-page of the Cairo edition of his *Fawākih* gives 1120/1708–9. *GAL S* II, 439 gives 1792, but without mentioning a source and this may be disregarded.

al-QASṬALLĀNĪ, Aḥmad b. Muḥammad
Shāfi'ī theologian, traditionist and preacher of Cairo, 1448–1517. *EI* (1) art, al-Kasṭallānī; *GAL* II, 73, *S* II, 78.

QATĀDA B. DI'ĀMA al-SADŪSĪ
Jurist, exegete and scholar of pre-Islamic literature and history, 679–736. Sezgin, i, 31–2.

*al-QAYRAWĀNĪ, 'Abdullāh b. Abī Zayd 'Abd al-Raḥmān
Mālikī jurist and teacher of Qayrawān (modern Tunisia), 922–96. His work paved the way for the triumph of the Mālikī *madhhab* in N. Africa. *EI* (2) art. Ibn Abī Zayd al-Kayrawānī; Sezgin, i, 478–81.

*SAḤNŪN, 'Abd al-Salām b. Sa'īd al-Tanūkhī
Pupil of Ibn al-Qāsim, Ibn Wahb and Ashhab, the pupils of Mālik who may perhaps have himself heard lessons from Mālik, 776–854. Sezgin, i, 468–71; *EI* (1).

SA'ĪD B. al-MUSAYYIB al-Makhzūmī
Leading transmitter of *ḥadīth* and exponent of the law in the generation of the 'Followers' (*al-tābi'ūn*) 634–713.

*al-SANŪSĪ, Muḥammad b. Yūsuf
Mālikī theologian and traditionist of Tlemçen, (d.1490). *EI* (1); *GAL* II, 250, S II, 352.

*al-SHABRAKHĪTĪ, Burhān al-Dīn Ibrāhīm b. Mar'ī
Mālikī jurist and teacher of Cairo (d.1694–5). *Shajara*, no. 1236; *GAL* II, 318, *S* II, 438.

al-SHAFI'Ī, Muḥammad b. Idrīs
Scholar and jurist 767–820, pupil of Mālik b. Anas, whose own teachings formed the basis of a new law school—the Shāfi'ī *madhhab*. *EI* (1); Sezgin, 484–90.

*al-SUBKĪ, Tāj al-Dīn 'Abd al-Wahhāb b. 'Alī
Shāfi'ī jurist, teacher and preacher of Cairo who spent part of his career in Damascus where he was *qāḍī* for a while. *EI* (1) art. al-Subkī (IX); *GAL* II, 89, *S*, 105.

SUFYĀN B. SA'ĪD al-THAWRĪ al-KŪFĪ
Traditionist and exegete of Kufa who founded a short-lived school of law, *c*.713–78. Sezgin, 518–9.

*al-SUHAYLĪ 'Abd al-Raḥmān b. 'Abdullāh al-Khath'amī
Mālikī scholar of Malaga in Andalusia, 1114–85, who emigrated to the Maghrib at the request of the Almohad ruler al-Manṣūr. *GAL* I,413, *S* I,733 (date of death to be corrected to 1185).

SULAYMĀN B. YASĀR
A trusted member of the generation of the 'Followers' (*al-tābi'ūn*), d. 725/6.

*al-SUYŪṬĪ, Jalāl al-Dīn 'Abd al-Raḥmān b. Abī Bakr
Shāfi'ī polymath, the most prolific of all Arabic writers, 1445–1505; an influential teacher in Cairo with many West African pupils and contacts. *EI* (1); *GAL* II, 143, *S* II, 178.

*al-TASŪLĪ, 'Alī b. 'Abd al-Salām,
Author of *al-Bahja*, a commentary on the *Tuḥfa* of Ibn 'Āṣim. He is said to have died in 1861 (*EI* (2) art. Ibn 'Āṣim, *GAL S* II, 376) or 1258/1842 according to *Shajara* no.1586, but if this is so it is difficult to understand how Dan Fodio might have been acquainted with his work.

al-TATĀ'Ī, Muḥammad b. Ibrāhīm
Mālikī jurist and for a while chief *qāḍī* of Egypt (d.1535/6). *Nayl*, 335–6; *Shajara*, no.1008; *GAL S* II, 435.

al-ṬAYĀLISĪ, Abū Dāwūd Sulaymān b. Dāwūd
Traditionist of Basra, 750–818, who compiled a *Musnad*. Sezgin, i, 97–8.

*al-TURṬŪSHĪ, Muḥammad b. al-Walīd
Mālikī jurist and teacher from Tortosa, 1051–1126 or 1131. After study in Saragossa and Seville, settled in Alexandria. *Dībāj*, 276–8; *GAL* I, 459, *S* I, 829.

*al-UBBĪ, Muḥammad b. Khilfa (or Khalfa) al-Washtātī
Mālikī jurist and traditionist of Tunis (d.1424). *Nayl*, 287; *GAL S* I, 265.

*al-UJHŪRĪ, Nūr al-Dīn 'Alī b. Muḥammad
Mālikī jurist of Egypt who gave *fatwās* favourable to both smoking and coffee drinking, 1559–1656. *GAL* II, 317, *S* II, 437.

al-'UTBĪ, Muḥammad b. Aḥmad
Scholar of Cordova who was one of the first to spread Mālik's teachings in Andalusia (d.869). Sezgin, i,472.

*al-WAGHLĪSĪ, 'Abd al-Raḥmān b. Aḥmad
Mālikī jurist and *muftī* of Bougie (d.1384/5). *GAL S* II, 351; *Nayl*, 168.

al-WANSHARĪSĪ, Aḥmad b. Yaḥyā
Mālikī *muftī* of Fez and compiler of the major collection of *fatwās* of the *madhhab* in the western Islamic world. (*c*. 1430–1508). *Nayl*, 87–8; *GAL* II, 248, *S* II, 348.

YAḤYĀ B. YAḤYĀ al-MAṢMŪDĪ
Studied under Mālik and a number of his pupils. He transmitted the *Muwaṭṭa'* on the basis of his 'hearing' (*samā'*) of it and was one of the first to propagate Mālik's teachings in Andalusia (d.848). *Dibāj*, 350–1; Sezgin, i, 459.

*ZARRŪQ, Aḥmad b. Aḥmad al-Burnusī al-Fāsī
Mālikī scholar and *ṣūfī* of Fez, 1442–93, who travelled widely. Described by Aḥmad Bābā as the last of those who united mysticism and legal scholarship. *Nayl*, 84–7; *GAL* II, 253, *S* II, 360.

al-ZUHRĪ, Muḥammad b. Muslim
One of the earliest and most prolific collectors of Traditions, 670–742. Sezgin, i, 280–3; *EI*(1).

*al-ZURQĀNĪ, 'Abd al-Bāqī b. Yūsuf
Mālikī scholar of Egypt, 1611–88 and teacher of Qur'ānic readings in Al-Azhar. *Shajara*, no. 1177; *GAL* II, 318, *S* II, 438.

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فى العسر واليسر . . . وقال : الحلم كظم الغيظ وملك النفس ، والغنى رضى النفس بما قسم لها وان قل ، والفقر شره النفس الى كل شىء ، والكلفة كلامك فيما لا يعنيك(١) . وفى شرح مقدمة الوصول للشيخ (١١٦ب) ابراهيم المواهبى(٢) نقلا عن شيخه / العارف أبى المواهب التونسى أن أول من تلقى القطبانية من المصطفى صلى الله عليه وسلم فاطمة الزهراء مدة حياتها ، ثم انتقلت الى أبى بكر ثم الى عمر ثم الى عثمان ثم الى على(٣) ثم الى الحسن رضى الله عنهم أجمعين . انتهى كلامه وبانتهائه انتهى كتاب « بيان وجوب الهجرة على العباد ، وبيان وجوب نصب الامام ، واقامة الجهاد » بحمد الله وحسن عونه سنة شاكر (٤) من الهجرة النبوية فى تسع رمضان (٥) يوم الخميس وقت الظهر(٦) .

الحمد لله الذى أنعم علينا بنعمة الايمان والاسلام وهدانا بسيدنا ومولانا(٧) محمد عليه من الله تعالى أفضل (٨) الصلاة وأزكى السلام .

الحمد لله الذى هدانا لهذا وما كنا لنهتدى لولا أن هدانا الله وآخر دعوانا أن(٩) الحمد لله رب العالمين . اللهم أرحم أمة(١٠) محمد رحمة عامة بجاهه آمين(١١) .

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(١) لا : ساقطة من ج .

(٢) د : الموهبى .

(٣) ثم الى على : ساقطة من ج .

(٤) سنة شاكر تعنى سنة ١٢٢١ هـ : ش = ١٠٠٠ . ا = ١ . ك = ٢٠ . ر = ٢٠٠ .

(٥) ب : تاسع .

(٦) ج : تم رمضان ٢٤ وسط الشمس .

(٧) ومولانا : ليس فى ١ .

(٨) ب : وأفضل .

(٩) ان : ليس فى ١ . ب : عن .

(١٠) امة : ليس فى ١ .

(١١) بجاهه آمين : ليس فى . ب . بجاهه : ليس فى ١ . اللهم أرحم أمة محمد رحمة عامة بجاهه آمين : ليس فى ج .

الفصــل الثالث والستون

في خلافة أمير المؤمنين الحسن بن على رضى الله عنه

فأقول وبالله التوفيق : إن الحسن رضى الله عنه بايعه بالخلافة المسلمون بعد وفاة أبيه ، فتخلف عنه معاوية (1) ثم كتب الى معاوية بتسليم الأمر اليه ، واشترط عليه شروطا فأجاب معاوية الى الصبر على ما اشترط عليه ، فعوتب (2) فى تسليمه الأمر الى معاوية ، فقال : اخترت ثلاثا (3) على ثلاث ، الجماعة على الفرقة (4) ، وحقن الدماء على سفكها ، وخلوة على عدة . فصدق ما قاله رسول الله صلى الله عليه (115ب) وسلم فيه : ان ابنى هذا سيصلح الله به بين فئتين عظيمتين من / المسلمين .

ومدة خلافته ستة أشهر ، وهى تكملة ما ذكره رسول الله صلى الله عليه وسلم من مدة الخلافة ثم تكون ملكا عضوضا ، ثم تكون جبروتا وفسادا فى الأرض . فكان كما قال عليه السلام .

وفى الكواكب الدرية لعبد الرءوف : وكان الحسن رضى الله عنه سيدا كريما حليما ذا سكينة ووقار ، جوادا . . . يكره الفتن . . . وكان يجيز الرجل الواحد بمائة ألف . . . وحج خمسا وعشرين حجة ماشيا من المدينة والنجائب تقاد بين يديه . . . بويع بالخلافة بعد قتل أبيه فأقام بها (5) ستة أشهر وأياما (6) ، ثم سار لحرب معاوية بن أبى سفيان ، فبايع الحسن على الموت أربعون ألفا ، فلما التقى الجيشان نظر الحسن اليهم أمثال الجبال من الحديد فقال : أيقتل هؤلاء بعضهم بعضا فى ملك من ملوك الدنيا ؟ لا حاجة لى به . وأرسل (116أ) الى معاوية يبذل له فى تسليم / الأمر اليه ، لا من قلة ولا من ذلة ، على أن تكون (7) له الخلافة من بعده ، وأن يقضى له ديونه ، وألا يطلب أحدا من أهل المدينة والحجاز والعراق بشىء مما كان أيام أبيه ، فأجابه معاوية الى جميع ذلك واصطلحا وظهرت المعجزة النبوية بذلك ،ونزل على الخلافة على تلك الشروط (8) . . . ثم رحل الحسن عن الكوفة الى المدينة فأقام بهـا فصار أميرها مروان يسبه ويسب أباه على المنبر وغيره ، ويبالغ (9) فى أذاه بما الموت دونه وهو صابر محتسب . . .

ومن كلامه رضى الله عنه : أكيس الكيس التقى ، وأحمق الحمق الفجور . . . وقال : السماح البذل

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(1) زيادة فى د : رضى الله عنه بالشام وحرضه المسلمون على قتال معاوية واستمد له معاوية .
(2) أ : فعوتبه .
(3) ج : ثلاث .
(4) ج : الفرقة عليه ، وحقوق الدماء .
(5) بها : ليس فى ج و د .
(6) ب : وأيام .
(7) ج : تئول . د : تحول .
(8) ج : الشرط .
(9) ج ود : وبالغ .

(١١٣ب) وصلى يوما الصبح / فانفتل عن يمينه ، وكان عليه كآبة حتى كانت الشمس على حائط المسجد قيد رمح ، وقلب يده وقال : لقد رأيت أصحاب رسول الله صلى الله عليه وسلم فما أرى اليوم شيئا يشبههم ، لقد كانوا يصبحون شعثا غبرا ، باتوا سجدا لله وقياما يتلون كتاب الله ، فاذا أصبحوا ذكروا الله وهملت أعينهم حتى تبلّ ثيابهم ، والله لقد كان القوم باتوا غافلين. فما رئي مفترا يضحك حتى ضربه ابن ملجم . وقد قال صلى الله عليه وسلم : أشقى الآخرين من يضرب عليا هذا فيبل هذه ، وأخذ (١١٤أ) بلحية علىّ رضى الله عنه. فلما ضربه ابن ملجم اجتمع عليه بنوه الحسن والحسين ومحمد فوصاهم / وصية طويلة ، وفي آخرها : يا بني عبد المطلب ، لا تخوضوا دماء المسلمين خوضا ، تقولون قُتل أمير المؤمنين ، لا تقتلوا الا قاتلى ، واضربوه ضربة ، ولا تمثلوا . ثم مات رضى الله عنه ، وله خمس وستون سنة أو ثلاث وستون سنة والله أعلم .

وفي الكواكب الدرية لعبد الرءوف : وكان لعلي رضي الله عنه سويق في إناء مختوم يشرب منه ، فقيل له : تفعل ذا بالعراق مع كثرة طعامهم ؟ فقال : أما إني لا اختمه [١] بخلا ، بل أكره أن يجعل فيه ما ليس منه فيدخل بطنى غير طيب . وجاءه ابن التيّاح [٢] فقال : يا أمير المؤمنين امتلأ بيت المال من صفراء وبيضاء ، فقال : الله أكبر ، فنادى فى الناس ففرق جميع ما فيه وهو يقول : يا صفراء يا بيضاء ، (١١٤ب) غرى غيرى ، ها وها حتى ما بقى فيه دينار ولا درهم . ثم أمر بنضحه / وصلى فيه ركعتين .

وكان يرقع [٣] قميصه فقيل له يا أمير المؤمنين لِمَ [٤] هذا ؟ قال : يخشع القلب ويقتدى به المؤمن. وأتى يوما الى السوق فقال : من عنده قميص بثلاثة [٥] دراهم ؟ فقال رجل عنده ، فأتاه به ، فأعطاه فلبسه فاذا به يفضل عن أطراف أصابعه ، فأمر به فقطع . وباع سيفه بثمن إزاره وقال: والله لو كان عندى ثمنه ما بعته ، فطالما كشفت به الكرب على المصطفى .

ومن كلامه : الدنيا جيفة ، فمن أرادها فليصبر على مخالطة الكلاب . واشترى يوما لحما بدرهم وحمله فقيل نحمل [٦] عنك ، فقال : أبو العيال أحق بحمله . . . وقال : الدنيا تغر وتضر وتمر ، إن الله لم يرها ثوابا لأوليائه، ولا عقابا لأعدائه . . . وقال: الدهر يومان، يوم لك ويوم عليك، فاذا كان لك فلا (١١٥أ) تبطر واذا كان عليك فلا / تضجر . وقال: ما لابن آدم والفخر ؟ أوله نطفة وآخره جيفة ، لا يرزق نفسه ولا يدفع حتفه [٧] . انتهى .

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(١) الكواكب الدرية : أختمه .

(٢) ج : التباح . أما فى باقى الأصول والكواكب الدرية فابن النباح . والصحيح : ابن التياح وقد روى أحمد وغيره من الأئمة عن مناقبه كما جاء فى كشف الخفاء ومزيل الالباس لاسماعيل بن محمد العجلونى المتوفى سنة ١١٦٢ هـ . الجزء الثانى ، مكتبة القدسى ، ١٣٥١ هـ ، ٣٨٣ .

(٣) أ : يركع .

(٤) أ وب : بم .

(٥) الكواكب الدرية : بثلاث .

(٦) الكواكب الدرية : نحمله .

(٧) عبد الرءوف المناوى ، الكواكب الدرية فى تراجم السادة الصوفية ، ١ : ورقة ٢٩ وجه .

الفصل الثاني والستون

فى خلافة أمير المؤمنين على بن ابى طالب رضى الله عنه

(١١٣أ) فأقول وبالله التوفيق : اعلم أن عثمان / رضى الله عنه لما قتل أتى الناس عليا فضربوا عليه إلباب ، فقالوا له : إن هذا الرجل قد قتل ، ولا بد للناس من خليفة ، ولا نعلم أحداً أحق بها منك ، فردّهم ، فأبَوا ، فقال : إن أبيتم فان بيعتى لا تكون سرا ، فأتوا المسجد ، فأتاهم ، فاجتمع على بيعته المهاجرون والأنصار ، وتخلف عن بيعته نفر ، فلم يكرههم . فكان بينه وبين عائشة ما كان فى وقعة الجمل ، ثم تخلف عنه معاوية ومن معه من أهل الشام ، فكان بينهم ما كان فى صِفّين غفر الله لهم أجمعين .

ثم خرج عليه الخوارج فقاتلهم واستأصل جموعهم . قال ابن عباس رضى الله عنه : ما رأيت أطرح لنفسه فى حلف من علىّ ، لقد كنت أراه يخرج حاسرا على رأسه بيده السيف ، على(١) الرجل (١١٢ب) الدارع فيقتله ، رضى الله عنه . وكان ذا شفقة شديدة / على رعيته ، متواضعا ورعا ذا قسوة فى الدين . كان يقول : انى(٢) لست بنبى ولا يوحى الىّ ولكنى أعمل بكتاب الله وسنة نبيه صلى الله عليه وسلم ما استطعت . فما أمرتكم من طاعة فحق عليكم طاعتى أحببتم أو كرهتم .

وكان يمشى فى الأسواق ويعين الحمال على الحمولة(٣) . وهو يقرأ هذه الآية : « تِلْكَ الدَّارُ الآخِرَةُ نَجْعَلُهَا لِلَّذِينَ لا يُرِيدُونَ عُلُوّاً فِي الأَرْضِ وَلا فَسَاداً وَالْعَاقِبَةُ لِلْمُتَّقِينَ »(٤). وكان قوته دقيق الشعير ، يأخذ منه قبضة فيضعها فى القدح ، ويصب عليها ماء فيشربه . وقال مطرق : رأيت علياً مؤتزراً بازار ، مرتدياً برداء ، ومعه الدرة كأنه أعرابى بدوى حتى بلغ السوق ، فقال : يا شيخ (١١٣أ) أحسن بيعى فى قميص بثلاثة دراهم ، فلما عرفه الشيخ أبى / أن يشترى منه شيئا ، فأتى آخر فكذلك(٥) حتى انتهى الى غلام حدث ، فاشترى منه قميصا بثلاثة دراهم قيمته درهمان . فلما رأى ذلك أبو الغلام رد درهما اليه ، فقال له على رضى الله عنه : اليك عنى باعنى برضاى ، وأخذت عنه برضاه . وأتى بأترج فأخذ الحسن أترجة فنزعها من يد الحسن وأمر به فقسم بين الناس . قال ابن الأرقم قال أبى : رأيت عليا وهو يبيع سيفا له(٦) فى السوق ويقول : من يشترى منى هذا السيف ، فوالذى فلق الحبة(٧) وبرأ النسمة لطالما كشفت به الحروب عن وجه رسول الله صلى الله عليه وسلم ،ولو كان عندى ثمن إزار ما بعته.

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(١) أ وب : الى .

(٢) د : اللهم انى .

(٣) ج : الحمال المحمولة . د : الجمال المحمولة .

(٤) سورة القصص ، ٨٣ .

(٥) فكذلك : ليس فى د .

(٦) ج و د : بسيف له .

(٧) ج : الجنة .

ثم حصر رضى الله عنه في ذى الحجة سنة خمس وثلاثين . حاصره أهل مصر وغيرهم ممن تمالأ على قتله من الخوارج ، قاتلهم الله ، حاصروه شهرا وهو في الدار . فلما اشتد الحصار خرج عليّ رضى الله عنه من منزله معتما بعمامة رسول الله صلى الله عليه وسلم متقلدا سيفه وأمامه ابنه الحسن وعبد الله بن عمر ، في نفر من المهاجرين والأنصار ، فحملوا على الناس وفرقوهم . ثم دخلوا على عثمان ، فقال : السلام عليك يا أمير المؤمنين فرد[1] عليه . فقال : مُرْنا نقاتل. فقال عثمان : أنشد[2] الله رجلا رأى أن لله عليه (١١١ أ) حقا / وأقر أن لى عليه حقا ألا يهريق في سبيلى [3] ملء محجمة . فخرج عليّ يقول : اللهم إنك تعلم أنا بذلنا المجهود، ثم دخل المسجد. واقتحموا على عثمان وكان صائما وقد نام أثناء النهار فرأى رسول الله صلى الله عليه وسلم فقال : إنك تفطر عندنا الليلة ، فقتل من يومه ، ولذا منع الناس عن[4] القتال . فقتل يوم الأربعاء بعد العصر . ودفن يوم السبت قبل الظهر لثمان عشرة خلت من ذى الحجة سنة خمس وثلاثين ، وهو ابن ثمانين وثمان ، وقيل تسعين . والله أعلم .

وفى الكواكب الدرية لعبد الرؤف : وكان ينام بالمسجد ليس حوله أحد وهو خليفة ، ويردف غلامه (١١١ب) خلفه / ، ويخطب بازار عدنى غليظ ، ثمنه أربعة أو خمسة [5] دراهم ، ويطعم الناس طعام الامارة ، ويدخل بيته فيأكل الخل والزيت ولم يمس ذكره بيمينه منذ أسلم .

وكان اذا مر بقبر بكى حتى تبتل لحيته . وكان لا يترك النظر في المصحف كل يوم ويقول : هذا كتاب ربى ولا بد للعبد اذا أتاه كتاب سيده أن ينظر فيه كل يوم ليعمل بما فيه .

ومن كلامه إن لكل شىء آفة ، وإن لكل نعمة عاهة ، وإن آفة هذا الدين وعاهة هذه النعمة ، عيابون طعانون يبدون لكم ما تحبون ، ويسرون [6] ما تكرهون . . . وقال ما يزع [7] الله بالسلطان اكثر مما يزع [7] بالقرآن [8] . وقال : لو طهرت قلوبنا لما شبعنا[9] من كلام الله[10] . انتهى .

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(١) ج ود : فردها .

(٢) د : أنشدك .

(٣) د : الأيهريق بسبيى . أ : في سبيى .

(٤) أ وب : عل .

(٥) ج ود . أو خمس .

(٦) الكواكب الدرية : ويسرون لكم .

(٧) في كل الأصول : يزع . والصحيح ما أثبتناه من الكواكب الدرية .

(٨) أى الفساد الذى يزيله الله بالسلطان اكثر مما يزيله بالقرآن : زيادة في ب .

(٩) الكواكب الدرية : لما شبعت .

(١٠) عبد الرءوف المناوى ، الكواكب الدرية في تراجم السادة الصوفية ، ١ : ورقة ٢٧ ظهر .

الفصل الحادي والستون

فى خلافة أمير المؤمنين عثمان بن عفان رضى الله عنه

فأقول وبالله التوفيق: لم يزل اسمه فى الجاهلية والاسلام عثمان ، وكان ذا مال كثير وشفقة على المسلمين ، ولما ولى زاد تواضعه ورفقه لهم ، قال الحسن : رأيته مضطجعا فى المسجد وإزاره تحت رأسه ، فيجىء الرجل فيجلس اليه ثم الآخر ، كأنه أحدهم . فيقوم وأثر الحصباء فى جبينه . وكان يطعم الناس (١٠٩ أ) طعام الإمارة ويأكل الزيت / والخل . وكان له عبد ، فقال له : انى كنت عركت أذنك فاقتص منى ، فأخذ العبد بأذنه فقال : إشدد(١) يا حبذا من قصاص فى الدنيا ولا قصاص فى الآخرة . ودعى يوما الى قوم على أمر قبيح فخرج اليهم فوجدهم قد هربوا ، فحمد الله تعالى وأعتق رقبة بذلك شفقة له عليهم ، وكثر الخير فى زمنه ، وكان يصوم الدهر ويقوم الليل إلا ضجعة من أوله .

ولعثمان سوابق فى الخيرات . قال ابن عباس رضى الله عنهما: أصاب الناس قحط شديد فى زمن (١٠٩ب) الصديق رضى الله عنه ، فشكوا الى الصديق ما هم فيه ، فقال لا تمسون حتى فرج الله / عنكم ، فقدم لعثمان ألف راحلة من الشام بُرا وطعاما ، فقدم التجار الى عثمان فقرعوا الباب فخرج اليهم ، فقال : ما تريدون؟ قالوا : تبايعنا حتى نوسع على فقراء المدينة . فقال لهم عثمان ادخلوا ، فاذا ألف وقر قد صبت فى دار عثمان ، فقال : كم تربحونى ؟ فقالوا لعشرة اثنى عشر ، فقال : قد زادونى (٢) . قالوا : لعشرة أربعة(٣) . فقال : قد زادونى(٢) فقالوا : لعشرة خمسة عشر . فقال : قد زادونى (٢) ، قالوا : ومن زادك ونحن تجار المدينة ؟ قال : زادونى بكل درهم عشرة ، قالوا لا . قال أشهدكم معشر (٤) التجار إنها (١١٠ أ) صدقة على فقراء المدينة . قال ابن عباس فنمت ليلتى فاذا أنا برسول الله صلى الله عليه وسلم عليه / حلة من نور وبيده قضيب من نور ، فقلت : بأبى أنت وأمى يارسول الله(٥) لقد طال شوقى اليك. فقال : صلى الله عليه وسلم: انى مبادر الى عثمان ، تصدق بوقر الف راحلة وان الله قبلها منه ، وزوجه بها عروسا فى الجنة ، وأنا ذاهب الى عروس عثمان . وجهز أيضا جيش العسرة بتسعمائة وخمسين بعيرا بأحلاسها وأقتابها ، وأتم ألفا بخمسين فرسا . وبعث فى تجهيزه أيضا عشرة آلاف دينار ، فجهز الجيش مرتين . وأفتتح فى أيام خلافته الاسكندرية ثم نيسابور ثم افريقيا ، ثم قبرص ، ثم سواحل الروم ، واصطخر الآخرة (١١٠ب) وفارس الاولى ، ثم جور وفارس الآخرة ، ثم طبرستان وكرمان وسجستان فى البحر ، ثم / إفريقية من حصون قبرص ، ثم ساحل الأردن ، ثم مرو

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(١) أ وب : شد .

(٢) د : فقال زيدونى .

(٣) د : اربعة عشرة .

(٤) د : يا معشر .

(٥) صلى الله عليه وسلم : زيادة فى أ وج ود .

وستين سنة كسن النبي صلى الله عليه وسلم . انتهى .

وفي الكواكب الدرية لعبد الرءوف : هو أول من جهر بالاسلام ، كما رواه الأئمة الأعلام ، فصار الدين[1] معلنا . . . وغلب كيد المشركين بما لزم قلبه من اليقين ، لا ينظر الى كثرتهم ، ولا يكترث بممانعتهم واتحاد[2] كلمتهم ، اتكالا على منشئهم ، وانتصارا بماصحهم وشانيهم ، محتملا لما احتمل الوصول مصطبرا على المكاره . . . قال الغزالي : ولما ولي الخلافة كانت له زوجة يحبها فطلقها خيفة أن تشير (١٠٧ب) عليه بشفاعة في باطل فيعطيها ويطلب رضاها ، وهذا من ترك ما لا بأس به مخافة مما به / بأس . ودخلت له بنت وهو يقسم مال بيت المال ، فأخذت درهما فنهض في طلبها حتى سقطت ملحفته عن أحد منكبيه ، ومحلت الصبية البيت تبكي وجعلت الدرهم في فيها ، فأدخل أصبعه فأخرجه وطرحه على الخراج وقال يا أيها الناس ، ليس لعمر ولا لآل عمر الا ما للمسلمين ، قريبهم وبعيدهم . . .

وكان رضى الله عنه . . . يخطب وهو خليفة بازار فيه اثنتا عشرة رقعة وقميص فيه أربع رقاع ، وليس له غيرهما ، وأبطأ يوما عن الخروج للجمعة ثم اعتذر بأنه كان يغسل ثوبه وليس له غيره . . . وكان (١٠٨أ) يتعاهد[3] العميان والزمنى والعجائز / والصبيان ليلا ويحمل اليهم الماء والحطب بنفسه ، ويخرج عنهم الأذى . فيقول له بعض الناس : دعني أحمل عنك . فيقول : من يحمل يوم القيامة على ذنوبي ؟

وخرج الى الشام بعدما فتحت وهو خليفة فأتوا مخاضة فنزل عن ناقته وجعل خفيه على عاتقه وأخذ بزمامها فخاض ، فقال أبو عبيدة : يا أمير المؤمنين تفعل هذا ما يسرني أن أهل الشام استشرفوك فقال : أوه ، لو يقول[4] ذا غيرك أبا عبيدة لجعلته نكالا للأمة ! إنا كنا أذل قوم فأعزنا الله بالاسلام ، فمهما نطلب العز بغير ما أعزنا الله به أذلنا .

ومن مفاريد أقواله الدالة على حقائق أحواله . . . قوله : وجدنا خير عيشنا الصبر ، وقوله : من خاف (١٠٨ب) الله لم يشف / غيظه ، ومن اتقاه لم يصنع ما يريد ، وقوله : السيد هو الجواد حين[5] يسأل ، والحليم حين[5] يستجهل ، والبار من يعاشره[6] . انتهى ما في الكواكب الدرية ملخصا .

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(١) أ وب : الدين .

(٢) أ : واتخاذ .

(٣) أ ج و د : يتعهد .

(٤) أ وب والكواكب الدرية : لو يقل .

(٥) ٠٠٠٠ (٥) : ساقطة من أ .

(٦) عبد الرءوف المناوي ، الكواكب الدرية في تراجم السادة الصوفية ، ١ : ورقة ٢١ - ٢٥

على عمر ، فأعرض بوجهه عنا ولم يكلمنا فاشتد ذلك علينا فشكونا ذلك الى ولده عبد الله (١) ، فقال رأى عليكم لباسا لم يلبسه رسول الله صلى الله عليه وسلم ولا الخليفة من بعده ، فأتينا منازلنا فنزعنا ما كان علينا وأتينا في البرود التي يعهدها منا فقام علينا واعتنقنا رجلا رجلا فقدمنا اليه الغنائم ، فقسمها بيننا بالسوية (١٠٥ب) ففرض(٢) في الغنائم شيء من أنواع الخبيص فذاقه فوجده طيب الريح والطعم ، فقال : / يا معشر المهاجرين والأنصار ، ليقتلن منكم الابن أباه والأخ أخاه على هذا الطعام . ثم أمر به فحمل الى أولاد (٣) من قتل من المسلمين ثم انصرف ولم يأخذ لنفسه شيئا .

وقال مولى لعثمان رضي الله عنه : بينما أنا مع عثمان في مال له بالعالية في يوم صائف(٤) ، اذ رأى رجلا يسوق بكرين وعلى الأرض مثل الفراش من الحر فقال عثمان : ما على هذا لو قال بالمدينة حتى يبرد بها ؟ فلما دنا قال : انظر من هو ؟ فنظرت فاذا هو عمر ، فقلت : هو أمير المؤمنين ، فقام عثمان فأخرج رأسه من الباب فاذا لفح السموم فأعاد (٥) رأسه حتى اذا حاذاه قال : ما أخرجك هذه الساعة ؟ قال : بكران من ابل الصدقة تخلفا فأردت أن ألحقهما بالحمى وخشيت عليهما أن يضيعا فيسألني الله عنهما . (١٠٦أ) فقال / عثمان : يا أمير المؤمنين هلم الى الماء والظل ونكفيك فقال : عد الى ظلك فقلت : عندنا من يكفيك . فقال : عد الى ظلك ومضى . فقال عثمان من أحب أن ينظر الى القوى فلينظر الى هذا .

ولما اشتد الجوع بالناس ضاق ذرعه بسبب الناس ، وكان لا يوافقه الشعير ، وكان يأكله ويقرقر بطنه ، فيضع يده عليه ويقول : ان شئت تقرقر ، وان شئت لا تقرقر ، مالك عندي غير ذلك حتى يفتح الله على المسلمين . وكان يقول لو مات جَدْيٌ بطفّ الفرات لخشيت أن يطالب الله به عمر ! وعوتب (١٠٦ب) يوما في عدم نومه ليلا، فقال ما لعمر وللنوم ؟! ان نمت نهارا ضاعت الرعية،وان نمت / ليلى(٦) ضيعت نفسي ، فكيف بالنوم معهما ؟

ويحك يا ظالم ! لِمَ تزعم أنك الوالى ولا تعلم ما يفعل في دارك فضلا عن خارجها ، بل تعلم ذلك ولا تبالى ! فَزِنْ نفسك بما يفعله أمراء المسلمين تجد بينكم(٧) بونا بعيدا .

وكان عمر يقول : اللهم كبرت سني وضعفت قوتي وانتشرت رعيتي . فاقبضني اليك غير مضيع ولا مفرط ، فكان دعاءه أيام التشريق ، فما انسلخ ذو الحجة حتى طعنه أبو لؤلؤة عبد المغيرة بن شعبة ، فقال عمر : قاتله الله أمرت به معروفا ، ثم قال : الحمد لله الذى لم يجعل منيتي بيد رجل يدعى الاسلام . (١٠٧أ) وتوفي رضي الله عنه لأربع بقين / من ذى الحجة سنة ثلاث وعشرين وهو (٨) ابن ثلاث

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(١) ج : الى ولده عبده .
(٢) هكذا في كل الأصول . ولربما يكون صوابه « ففضل » .
(٣) ج ود : فحمل الأولاد من . . .
(٤) ب وج : صائق .
(٥) أ و د : فعاد .
(٦) ج : ليلتي .
(٧) أ و ب : بينكما .
(٨) وهو : ليس في أ ، ب ، و د .

وطاف ليلة فاذا امرأة وحولها أطفال يبكون وقدر على النار قد ملأتها ماء ، فدنا عمر من الباب فقال يا أمة الله ، من أى شيء[1] بكاء هؤلاء الأطفال ؟ فقالت : من الجوع ! أعللهم بهذه القدر حتى يناموا ، وأوهمهم أن فيها شيئا . فجعل يبكى ثم انصرف الى دار الصدقة ، وأخذ غرارة وحمل فيها شيئا من دقيق (١٠٣ب) / وسمن وشحم وتمر[2] وثياب ودراهم حتى ملأ الغرارة ، ثم قال لأسلم غلامه : يا أسلم احمل على . قال : يا أمير المؤمنين أنا أحمل عنك . قال : لا يا أسلم أنا أحمله ، لأنى المسئول عنه فى الآخرة . وحمله على عاتقه حتى أتى منزل المرأة ، وأخذ القدر وجعل فيها دقيقا وشيئا من شحم وتمر[3] وجعل يحركه بيده وينفخ تحت القدر . قال فرأيت لحيته والدخان يخرج من خلالها حتى طبخ لهم ، ثم جعل يغرف لهم بيده ويطعمهم حتى شبعوا ثم خرج رضى الله عنه .

وخرج فى ليلة مظلمة طلحة[4] فرأى عمر ، رضى الله عنهما ، دخل بيتا وخرج منه ، فلما أصبح طلحة ذهب الى ذلك البيت فاذا عجوز عمياء مقعدة ! فقال : مال هـذا الرجل يأتيك ليـلا ؟ فقالت : (١٠٤أ) يتعاهدنى / منذ كذا وكذا بما يصلحنى ويخرج عنى الأذى تعنى القذر .

ثم إنه رضى الله عنه بعث البعوث ، ففتح الله على يده[5] دمشق ثم الروم ثم القادسية وحمص وجلولاء والرقة والروحان ونصيبين وعسقلان وطرابلس وما يليها من السواحل ، وبيت المقدس والأهواز ومصر وتستر ونهاوند وأصبهان وفارس واصطخر وهمدان والبربر[6] والبرنس وغير ذلك . وكانت درته أهيب من سيف الحجاج . وكان تهابه ملوك فارس والروم و (هو[7]) مع ذلك باق على حاله قبل الولاية فى لباسه وزيه وأفعاله وتواضعه ، يسير منفردا فى حضره وسفره ، لم تغيره الامارة ، ولم يستطل على مسلم بلسانه . (١٠٤ب) ليس له حجاب ولا حاجب / أحدا فى الحق لمنزلته ، ولا يطمع الشريف فى حقه ولا ييئس الضعيف من عدله ، ولا يخاف فى الله لومة لائم . ونزل نفسه فى مال الله منزلة رجل من المسلمين . لا يأكل منه الا ما يتقوى به على اصلاحه . كان يلبس جبة من صوف مرقعة بعض رقعها من أدم . يطوف فى الأسواق وعلى عاتقه الدرة يؤدب بها الناس ، ويمر بالنكث والنوى فيلتقطه ويلقيه فى منازل الناس ،لينتفعوا به . والنكث الغزل المنقوض ليغزل ثانيا . ولبس قميصا جديدا ثم دعا بالشفرة أى السكين ، ثم قال لابنه (١٠٥أ) عبد الله ضم القميص والصق يدك بأطراف الأصابع ثم أقطع . قال : فقطعت ما قال فقلت / لو سويته ! فقال : دعه هكذا رأيت رسول الله صلى الله عليه وسلم قد فعل .

قال الأحنف بن قيس أخرجنا عمر فى سرية الى فارس فأصبنا من بياض فارس ، واكتسينا فقدمنا

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(١) أ و ب : من ايش .
(٢) ب : وتمر .
(٣) ب : وسمن . ج : وتمر .
(٤) ج : وخرج طلحة فى ليلة مظلمة .
(٥) أ و ب : يديه .
(٦) والبربر : ليس فى د .
(٧) زيادة للترضيح .

الفصل الستون

في خلافة أمير المؤمنين(1) عمر بن الخطاب رضي الله عنه

فأقول وبالله التوفيق : اعلم أن عمر رضى الله عنه هو أول من سُمى(2) أمير المؤمنين ، وهو أول الذى أعز الله الاسـلام به ، وهو أول من عسّ(3) فى عمله أى مشى ليـلا ، ليحفظ الدين والناس . (102 أ) وهابه الناس هيبة عظيمة حتى تركوا الجلوس بالأفنية ، فبلغه ذلك فجمعهم / ثم جلس على المنبر حيث كان أبو بكر يضع قدميه ثم قـام فحمد الله وأثنى عليه بما هو أهله ، وصلى على النبى صلى الله عليه وسلم ، ثم قال : بلغنى أن الناس قد هابوا شدتى وغلظتى ، وقالوا : قد كان عمر يشتد علينا ورسول الله صلى الله عليه وسلم بين أظهرنا ، ثم اشتد علينا وأبو بكر والينا دونه ، فكيف وقد صارت الأمور اليه ؟ ومن قال ذلك فقد صدق ، كنت مع رسول الله صلى الله عليه وسلم فكنت عبده وخادمه وسيفا مسلولا حتى يغمدنى أو يدعنى ، فلم أزل معه كذلك حتى قبضه الله وهو عنى راض والحمد لله ، وأنا أسعد بذلك . (102ب) ثم ولى أمر الناس أبو بكر فكنت خادمه وعونه أخلط شدتى بلينه ، / فأكون سيفا مسلولا حتى يغمدنى أو يدعنى ، فلم أزل معه كذلك حتى قبضه الله وهو عنى راض والحمد لله ، وأنا أسعد بذلك . ثم انى وليت أموركم ، اعلموا أن تلك الشدة قد ضوعفت لكنها انما تكون على أهل الظلم والتعدى على المسلمين ، وأما أهل السلامة والدين ، فأنا ألين لهم من بعضهم لبعض ، ولست أدع أحدا يظلم أحدا ويتعدى عليه حتى أضع خده على الأرض(4) وأضع قدمى على الخد الآخر حتى يذعن للحق . ولكم علىّ حق ألا ألقيكم فى المهالك ، واذا غبتم فى البعوث فأنا أبو العيال حتى ترجعوا ، أقول قولى هذا واستغفر الله لى ولكم .

قال سعيد بن المسيب : فوفّى(5) والله عمر وزاد فى الشدة فى مواضعها ، ولين فى مواضعه ، وكان (103 أ) أبا العيال ، حتى / كان يمشى الى المغيبات اللاتى(6) غاب أزواجهن ، ويقول ألكن حاجة اشترى (لكن) (7) فانى أكره أن تُخدعنَ فى البيع والشراء ، فيرسلن معه بجواريهن فيدخل السوق ووراءه من جوارى الناس فى غلمانهن ما لا يحصى فيشترى لهن بحوائجهن فمن كانت ليس عندها خادم حمل حاجتها ، ومن كانت ليس لها(8) شىء اشترى لها (8) من عنده رضى الله عنه .

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(1) أمير المؤمنين : ليس فى أ ولا فى ب ولا فى د . وما أثبتناه من ج ومقدمة الكتاب .

(2) أ : يسمى .

(3) د : أس .

(4) أ وب : بالأرض .

(5) ج : وفى . د : ووفى .

(6) كل الأصول : التى .

(7) زيادة اقتضاها السياق .

(8) .... (8) : ساقطة من د .

العبد العجب بشيء من زينة الدنيا مقته الله حتى يفارق تلك الزينة . وقال : وجدنا الكرم فى التقوى ، والغنى فى اليقين ، والشرف فى التواضع . وقال : من ذاق من خالص المعرفة شيئا ، شغله ذلك عما سوى الله ، واستوحش من جميع البشر . وقال : من مقت نفسه فى ذات الله أمنه الله من مقته . وقال : إياكم والفخر ، وما فخر مَن خُلق من تراب ثم اليه يعود ، ثم يأكله الدود ؟ وقال : لا خير فى خير بعده النار ، ولا شر فى شر بعده الجنة . ودخل حائطا فاذا بطائر فى ظل شجر فتنفس الصعداء وقال : طوبى لك يا طير ، تأكل (١٠١ أ) الثمر وتستظل بالشجر ، وتصير (١) الى غير حساب ، ياليت أبا بكر مثلك . / وكان اذا مدح قال : أللهم أنت أعلم منى بنفسى ، وأنا أعلم بنفسى منهم ، فأجعلنى خيرا مما يظنون واغفر لى ما لا يعلمون ولا تؤاخذنى بما يقولون .

وكان اذا قام فى الصلاة كأنه (٢) عود مقطوع ، لما يعتريه من الخشوع . وقال : وددت أنى شجرة توكل وتعضد . ولما مرض قيل له : ألا ندعو لك طبيبا ؟ قال قد رآنى فقال : انى فعال لما أريد . ثم دعا عمر فوعظه حتى أبكاه .

ثم قال : ان أنت حفظت وصيتى فلا يك غائب أحب اليك من الموت وهو آتيك وان ضيعتها(٣) (١٠١ب) فلا يك غائب أبغض اليك منه ولست بمعجزه . ثم قال لمن حضره : أوصيكم بالله / لفقركم وفاقتكم أن تتقوه، وأن تثنوا عليه بما هـو أهله وأن تستغفروه، انه كان غفارا. والسلام على من أتبع الهدى(٤). مات سنة ثلاث عشرة عن ثلاث وستين سنة على الأصح (٥) . انتهى .

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(١) ج ود : وتطير .
(٢) الكواكب الدرية : فكأنه .
(٣) الكواكب الدرية : وان انت ضيعتها .
(٤) على من اتبع الهدى : ليس فى أ ولا فى ب ولا فى الكواكب الدرية . وما اثبتناه من ج ود .
(٥) عبد الرءوف المناوى ، الكواكب الدرية فى تراجم السادة الصوفية ، ١ : ورقة ٢١ ظهر .

والله ولا نقيلك ، قدّمك رسول الله صلى الله عليه وسلم ، فمن يؤخرك ؟

ثم إنه رضى الله عنه من شدته فى الدين لم تغيره الخلافة عن تواضعه الذى كان عليه . خرج يوما وعلى عاتقه عباءة ، فقال رجل : إنى أكفيك (١) . فقال : اليك عنى لا تغرنى(٢) . وكان رضى الله عنه يحلب للحى أغنامهم ، فلما بويع قالت جارية من الحى : لا يحلب(٣) الآن منائح دارنا ، فسمعها فقال : لأحلبنّها لكم وأرجو الا يغيرنى ما دخلت فيه عن خلق كنت فيه . فكان يحلب(٤) لهم رضى الله عنه .

وكان اذا ورد عليه الخصم نظر فى كتاب الله تعالى فان وجد فيه ما يقضى به بينهم قضى به وان لم يجد(*) وعلم من حديث رسول الله صلى الله عليه وسلم قضى به ، وان لم يجد (*) خرج وسأل المسلمين ثم يقول : الحمد لله الذى جعل فينا من يحفظ علينا ديننا ، أو قال: يحفظ علينا سنة نبينا . وكان يأخذ بلسانه (١٠٠ أ) ويقول : هذا الذى أوردنا الموارد . /

ولما مرض قال : انظروا ما زاد فى مالى منذ دخلت الامارة فابعثوا به الى الخليفة من بعدى . فاذا هو عبد تولى بحمل صبيانه ، وناضح ، فبعث به الى عمر ، فقال : رحمة الله على أبى بكر ! لقد أتعب من بعده تعبا شديدا . وقيل له فى مرضه ألا ندعو لك طبيبا ينظر اليك ؟ فقال : نظر الىّ . قالوا : وما قال ؟ قال : قال لى : إنى فعّال لما أريد .

وكان سبب موته كمدا لحقه على رسول الله صلى الله عليه وسلم ، أى حزنا مكتوما . توفى ليلة الثلاثاء بين المغرب والعشاء لثمان بقين من جمادى الآخرة سنة ثلاث عشرة من الهجرة ، وله ثلاث وستون سنة . رضى الله عنه وأرضاه .

وفى الكواكب الدرية لعبد الرءوف : وكان أبو بكر الصديق رضى الله عنه أعلم الناس بالله وأخوفهم له ، حتى كان يخرج من جوفه ريح الكبد المشوى (٦) . وكان يحتاط فى مأكله ومشربه أشد احتياط(٧) واذا أكل ما فيه شبهة ، ثم علمه استقاءه بافراط . شرب لبنا من كسب عبده ثم سأله فقال : تكهنت لقوم (١٠٠ب) فأعطونى ، فأدخل أصبعه فى فيه وتقيأ حتى ظن أن نفسه / ستخرج ، ثم قال : اللهم إنى أعتذر اليك مما حملت العروق وخالط الامعاء . قال فى الاحياء : وكان يطوى ستة أيام . وكان يأخذ بطرف لسانه ويقول هذا(٨) أوردنى الموارد . وقال لا خير فى قول لا يراد به وجه الله ، ولا فى مال لا ينفق منه فى وجه الله ، ولا فيمن يغلب جهله حلمه ، ولا فيمن يخاف فى الله لومة لائم . وقال : اذا دخل

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(١) أ وب وج : أكفك .
(٢) ج : لا تقربنى .
(٣) أ : لا تحلب .
(٤) أ : يحلبهم .
(٥) .... (*) : ساقطة من د .
(٦) الكواكب الدرية : المشوية .
(٧) أشد احتياط : ساقطة من ج و د .
(٨) أ : هذا الذى .

ستَرَوْن بعدى أثَرة فاصبروا حتى تلقونى على الحوض(1) . وقال لنا فى آخر خطبة خطبها : أوصيكم بالأنصار خيرا تقبلوا من محسنهم وتجاوزوا عن مسيئهم ، ولو كان لكم فى الأمر شىء ما رأيتم أثرة ولا وصىّ بكم . فلما سمعوا ذلك تذكروا الحق وانقادوا له ، والتزموا حكمه . فبادر عمر له فقال : مد يدك يا أبا بكر أبايعك . ومد أبو بكر يده وبايعه ، فبايعه الناس .

(98ب) فلما استخلف الصديق قام خطيباً ثم / قال : أما بعد أيها الناس ، قد وليت أمركم ولست بخيركم ، ولكن نزل القرآن وسن رسول الله صلى الله عليه وسلم السنن ، فعلمنا أن الكيس التقوى ، والحمق الفجور ، وأن أقواكم عندى الضعيف حتى آخذ له بحقه ، وأن أضعفكم عندى القوى حتى آخذ منه الحق . أيها الناس إنما أنا متبع ولست بمبتدع ، فان أحسنت فأعينونى ، وان زغت فقوّمونى . ثم إن الصديق رضى الله عنه جمع الصحابة وشاورهم فى قتال المرتدين ومانعى الزكاة ، فقال له الصحابة : دع الزكاة حتى يتمكن الدين ويسكن جأش المسلمين ، فقال : والله لو منعونى عقالا لجاهدت عليه . فقال له عمر : تألف الناس وارفق(2) بهم . فقال : جبار فى الجاهلية وخوار(3) فى الاسلام ! قد انقطع الوحى وتم الدين ، أينْتَقَصُ(4) وأنا حى ؟ وكان أسامة بن زيد قد وجهه رسول الله صلى الله عليه وسلم الى الشام فى سبعمائة بطل . فلما نزل بذى خشاء قبض رسول الله صلى الله عليه وسلم (99أ) وارتدت العرب ، فقال الصحابة لأبى بكر : ردّ هؤلاء ، فقال : والله الذى / لا اله الا هو ، لو جرت الكلاب بأرجل أزواج النبى(5) ما رددت جيشا جهزه رسول الله صلى الله عليه وسلم ، فأمر أسامة أن يمضى ، وقال(6) ان رأيت أن تأذن لعمر بالمقام عندى لأستأنس به ، وأستعين برأيه ! فقال أسامة(7) قد(8) فعلت . وسار أسامة(ه) رضى الله عنه فجعل لا يمر بقبيلة يريدون الارتداد الا قالوا : لولا أن لهؤلاء قوة ما خرجوا بمثل هؤلاء من عندهم . فلقوا الروم فهزموهم وقتلوهم ورجعوا سالمين . فقاتل أبو بكر جموع أهل الردة الى أن رجعوا الى دين الله . وبعث الجيوش الى الشام والعراق ، وفتح اليمامة . وكان الصواب ما فعل أبو بكر ، اذ لو ساهلهم فى منع الزكاة لقويت شوكتهم ، وعسر الى الطاعة صرفهم . فعجل الدواء قبل استعضال الداء . اذ لو ساهلهم وفهموا الضعف لارتد جميع من يريد الارتداد ، ولاتسع الخرق على الراقع . فقال عمر : لو لا أبو بكر لهلكنا . وقال أبو هريرة : والله الذى لا اله الا هو ، لو لا أن أبا بكر استخلف ما عُبد الله تعالى . فلما أيد الله تعالى به الدين ، واستقام الأمر أحتجب عن الناس (99ب) ثلاثا / يشرف عليهم كل يوم يقول : قد أقلتكم بيعتى فبايعوا من شئتم ، فيقول عمر : لا نستقيلك

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(1) انظر صحيح البخارى ، ه : 41 وصحيح مسلم ، 12 : 235 .

(2) ج ود : فارفق .

(3) ج : واخوان

(4) د . أينقض .

(5) أ وب : صلى الله عليه وسلم ج : عليه الصلاة والسلام .

(6) أ : فقال .

(7) .... ساقطة من ج .

(8) ب ود : فقد .

الفصل التاسع والخمسون

فى خلافة أبى بكر رضى الله عنه

فأقول وبالله التوفيق : واعلـــم ان الله تعالى لما قبض نبيه صلى الله عليه وسلم ماج الناس موجـــة ، واشتد الأمر ، وارتد العرب وجزع الصحابة وكان أجزعهم[1] عمر بن الخطاب رضى الله عنه ، اذ أخذ بقائم سيفه وقال : لا أسمع أحدا يقول مات رسول الله صلى الله عليه وسلم[2] الا ضربته بسيفى ! فأقبل أبو بكر فدخل على النبى صلى الله عليه وسلم[2] وكشف عن وجهه الكريم فقبّله وبكى ، ثم قال : بأبى (٩٧ب) أنت وأمى يا رسول الله ، لا يجمع الله عليك موتتين / ثم خرج وقال : أما بعد ، من كان يعبد محمدا فان محمدا قد مات ، ومن كان يعبد الله فان الله حى لا يموت ، قال الله تعالى : « وَمَا مُحَمَّدٌ إلاَّ رَسُولٌ قَدْ خَلَتْ مِن قَبْلِهِ الرُّسُلُ أَفَإِن مَاتَ أَوْ قُتِلَ انقَلَبْتُمْ عَلَى أَعْقَابِكُمْ وَمَن يَنْقَلِبْ عَلَى عَقِبَيْهِ فَلَن يَضُرَّ اللهَ شَيْئاً وَسَيَجْزِي اللهُ الشَّاكِرِينَ »[3] . قال عمر : فارتعدت حتى هويت على الأرض فتنبه الصحابة ، ثم ماج الناس ومرجت قلوبهـــم وتشوفوا الى رئيس يرجع إليه تدبيرهم ، واجتمعت الأنصار فى سقيفة بنى ساعدة ، ليعقدوا للرجل منهم الأمر ، فاجتمع المهاجرون الى أبى بكر فأخبروه بذلك ، وقالوا : نرسل اليهم . فقال أبو بكر : ألا نأتيهم فى موضعهم ! فتقدم ، واتبعه المهاجرون حتى جاءوا الى الأنصار ، فتقاولوا ، وقالت الأنصار : منا أمير ومنكم أمير ، فتكلم أبو بكر على مقتضى الدين وقال : يا معشر الأنصار قد علمتم أنّا رهط رسول الله صلى الله عليه وسلم وأصل العرب ، (٩٨أ) وقد قال عليه السلام: الأئمة من قريش / الى أن تقوم الساعة ، وقد سمانا الله فى كتابه الصادقين[4] حـــين قـــال : « لِلْفُقَرَاءِ الْمُهَاجِرِينَ الَّذِينَ أُخْرِجُوا مِن دِيَارِهِمْ وَأَمْوَالِهِمْ يَبْتَغُونَ فَضْلاً مِّنَ اللهِ وَرِضْوَاناً وَيَنصُرُونَ اللهَ وَرَسُولَهُ أُولَئِكَ هُمُ الصَّادِقُونَ »[5] وسماكم بالمفلحين : « وَالَّذِينَ تَبَوَّؤُا الدَّارَ وَالإِيمَانَ مِن قَبْلِهِمْ يُحِبُّونَ مَنْ هَاجَرَ إِلَيْهِمْ وَلاَ يَجِدُونَ فِي صُدُورِهِمْ حَاجَةً مِّمَّا أُوتُوا وَيُؤْثِرُونَ عَلَى أَنفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ وَمَن يُوقَ شُحَّ نَفْسِهِ فَأُولَئِكَ هُمُ الْمُفْلِحُونَ[6] » . وامركم أن تكونوا معنا فى قوله : « يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللهَ وَكُونُوا مَعَ الصَّادِقِينَ[7] » . وقال لكم النبى صلى الله عليه وسلم[8] :

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(١) د : بفزع الصحابة وأفزعهم .

(٢) ... (٢) ساقطة من د .

(٣) سورة آل عمران ، ١٤٤ .

(٤) أ و ب : الصديقين .

(٥) سورة الحشر ، ٨ .

(٦) سورة الحشر ٩ .

(٧) سورة التوبة ، ١١٩ .

(٨) ب : عليه السلام . ج : عليه الصلاة والسلام .

لك إمام الناس أو نائب الإمام وأنت شيطان أو نائب شيطان ! تريد أن تتشبه بقارون (١) وتستكثر من الفتن
قال الله تعالى : «إِنَّمَا أَمْوَالُكُمْ وَأَوْلَادُكُمْ فِتْنَةٌ» (٢) وفي الصحيح : ما ترك رسول الله صلى الله
(٩٦ أ) عليه وسلم عند موته درهما ولا دينارا ولا عبدا ولا أمةً الا بغلته البيضاء / التى كان يركبها ،
وسلاحه وأرضا جعلها لابن السبيل صدقة . وقالت عائشة رضى الله عنها : ما شبع رسول الله صلى الله عليه
وسلم من خبز شعير . وفي الصحيح : كان يظل جائعا يتلوى طول ليلته من الجوع فلا يمنعه صيام يومه ،
ولو شاء لأعطاه ربه كنوز الأرض وثمارها ورغد عيشها (٣) .

ومن صفته في التواضع أن اسرافيل عليه السلام قال : يا محمد ان ربك خيّرك بين أن تكون نبيا
ملكا أو نبيا عبدا . فقال : بل نبيا عبدا . وعن أبى أمامة خرج علينا رسول الله صلى الله عليه وسلم متكئا على
عصا فقمنا له فقال : لا تقوموا كما تقوم الأعاجم يعظّم بعضهم بعضا . وقال : انما أنا عبد آكل كما يأكل
العبد وأجلس كما يجلس العبد . وكان يركب الحمار ويردف خلفه ويعود المساكين ويجالس الفقراء ،
ويجيب دعوة العبد ويجلس بين أصحابه مختلطا بهم حيث انتهى به المجلس ، كأحدهم ليس له تميز بينهم
(٩٦ب) وخطام حماره حبل من ليف وعليه أكاف يوم بنى قريظة . وحج على رحل رث / وكان راحلته
زاملة (٤) وقال : اللهم اجعله حجا مبرورا لارياء فيه ولا سمعة. هذا وقد فتحت عليه الأرض . ويكون فى
بيته فى مهنة أهله ، أى فى خدمتهم يفلى ثوبه ويرقعه ، ويخصف نعله ، ويخدم نفسه ويعلف ناضحه
ويقُمّ البيت ، ويأكل مع الخادم ويعجن معه ، ويحمل سلعته من السوق ، ولا يحمل له السلعة أحد ،
لا يطوى بشره عن (٥) أحد ، يخدم فى إكرام الضيف (٦) ، قال أنس رحمه الله : خدمته عشر سنين فما
قال لى أفٍ قط ، ولا قال لشىء صنعته لِمَ صنعته ولا لشىء تركته لم تركته ، يقبل عذر المعتذر ويبدأ أصحابه
بالمصافحة ، ولا يقطع على أحد حديثه ولا يشافه أحدا بما يكره ، ما انتقم لنفسه قط الا أن تُنتهك حرمات
الله فينتقم لها لله ، وأمثال هذه الصفات السنية منه لا تحصى .

وأما زهده وحلمه وجوده وشجاعته وحياؤه وحسن عشرته وعدله ووقاره وبقية خصاله الحميدة
(٩٧ أ) التى لا تنحصر فلو أردناها لجاءت / فى مجلدات . فراجع الشفاء لعياض ، والسير المؤلفة فى
ذلك . وقالت عائشة : لو تبلّغت من الدنيا بما يقوتك ! فقال : يا عائشة ، مالى وللدنيا ؟ إن إخوانى (٧)
من أولى العزم من الرسل صبروا على ماهو أشد من هذا فمضَوا على حالهم فقدموا على ربهم فأكرم مآبهم
وأجزل ثوابهم . فأجدنى أستحى إن ترفهت فى معيشة أن يقصر بى غدا دونهم ، وما من شىء أحب الى
من اللحوق بإخوانى وأخلائى . فما أقام بعدُ الا شهرا حتى تُوفى رسول الله صلى الله عليه وسلم . انتهى .

(١) ج و د . تشبه بقارون .
(٢) سورة التغابن ، ١٥ .
(٣) صحيح البخارى ، ٤ : ٤٨ باختلاف فى الألفاظ .
(٤) أ و ب و ج : زامله . وما أثبتناه من د .
(٥) ج و د : على .
(٦) أ : الأضياف .
(٧) أ و ب : إخوتى .

الفصل الثامن والخمسون

سيرة النبى صلى الله عليه وسلم مع الخلق لما بعث اليهم[١]

فأقول وبالله التوفيق : فاعلم أن رسول الله صلى الله عليه وسلم لما بعث[١] الى الناس دعاهم الى توحيد الله ، وبين لهم المعجزات الباهرات التى لا يشك معها عاقل أنه رسول الله ، فكذبه قومه وآذوه أشد أذية[٢] فى ذلك وهو صابر لهم . وآذوا من آمن به أشد أذية[٢] حتى قتلوا بعضهم ، وألجئوا بعضهم الى الخروج من مكة الى حيث يوحدون ربهم ويعبدونه . ولما اشتد إيذاؤهم[٣] نزل جبريل عليه السلام فقال : يا محمد إن الله تعالى أمر السماء والارض والجبال أن تطيعك . فقال : أؤخر أمتى لعل الله أن يتوب عليهم ، وقال لملك الجبال لما قال له ، إن شئت أطبقت عليهم الأخشبين[٤] . فقال : أؤخرهم لعل الله أن (٩٥أ) / يخرج من أصلابهم من يوحد الله . ومع هذا العطاء الذى أعطاه ربه ، لم يظهر عليهم بالقهر أولا ، بل كان يعرض نفسه على القبائل وفى المواسم ، ويقول : من يؤمن بى ، من ينصرنى حتى أبلغ رسالة ربى وله الجنة ؟ فكانت السعادة للأنصار ، فلقوه بالمواسم فبايعوه . وكان الرجل منهم يخرج إليه من المدينة فيؤمن به فيرجع الى أهله فيؤمنون بايمانه ، حتى لم تبق دار[٥] من الأنصار الا وفيها رهط[٦] من المسلمين يظهرون الاسلام . ثم اجتمعوا وقالوا : الى متى نترك رسول الله صلى الله عليه وسلم يطرد فى جبال مكة ؟ فرحل سبعون رجلا وقالوا : نبايعك . قال : تبايعوننى على السمع والطاعة فى النشاط والكسل ، وعلى الأمر بالمعروف والنهى عن المنكر ، وأن تقوموا فى الله ولا تخافوا[٧] فى الله لومة لائم ، وعلى أن تنصرونى وتمنعونى اذا قدمت عليكم بما تمنعون به أنفسكم وأموالكم وأبناءكم ولكم الجنة فقاموا وبايعوه على ذلك . وأخذ بيده أسعد بن زرارة رضى الله عنه وهو أصغرهم ، وقال : رويـدا أهل يثرب ، فانا لم (٩٥ب) / نضرب أكباد الابل اليه الا ونعلم أنه رسول الله صلى الله عليه وسلم وأن إخراجه اليوم مفارقة للعرب ، وقتل أخياركم وأن تعضكم السيوف ، وإما انتم قوم تصبرون على ذلك وأجركم على الله وإما أنتم قوم تخافون من أنفسكم الجبنة ، فبينوا ذلك فهو أعذر لكم عند الله . فقالوا : أمط عنا ذا يا سعد فوالله لا ندع هذه البيعة أبدا . فلما هاجر رسول الله صلى الله عليه وسلم آووه ونصروه وعظموه واتبعوه ، واتبعوا النور الذى أنزل معه ، فكانوا السعداء فى الدنيا والآخرة ، ببركة مبايعته مع أنهم قريب عهد بكفر .

وأنت ويحك يا ظالم بعد أن أكمل الله تعالى الدين وأمات أمر الجاهلية ، تريد عكس ذلك ! ويقال

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(١) ... (١) : ساقطة من د .

(٢) فى كل الأصول : إذاية .

(٣) كل الأصول . إذايتهم .

(٤) الأخشبان هما جبلا مكة .

(٥) كل الأصول : لم يبق دار .

(٦) ج ود : رهبة .

(٧) كل الأصول : ولا تخافون .

الفصل السابع والخمسون

فى ملجأ أمير المؤمنين عند تغير أحواله وما يصلح أموره

(فأقول وبالله التوفيق)(١) وذلك أن يجمع الملك الفقهاء ويدعو الى الحق والعمل به وإحياء السنن (٩٤أ) وبسط العدل ، والقعود على اللبود ، لتوصل النظر فى المظالم وتكريم القواد والملوك / وأبناء الملوك ، وأن يعدهم بالمواعيد الكريمة والمراتب السنية والولايات المشاكلة ، يسر كل واحد منهم بذلك وحده(٢) ، ويحط الخراجات السلطانية والوظائف القهرية(٣) ، ثم يكرم وجوه كل قبيلة والمقدّمين من كل عشيرة ، ويأمرهم بالاحسان الى حملة العلم وحفظة الشريعة والصالحين والزهاد ، فيستعمل عليهم خيارهم وذوى الأحلام منهم ، وألا يسلب رئيسا رياسته ، بل يُبقى(٤) على كل ذى عز عزه ، ويولى كل ذى منزلة منزلته ، فحينئذ يكون رئيس الرؤساء قال الشاعر :

لا يصلح الناس فوضى لا سراة لهم ولا سراة اذا جهالهم سادوا(٥)

ظفر الملك بعدوه على حسب عدله فى رعيته ، ونكوبه فى حروبه على حسب جوره . واصلاح الرعية أنفع من كثرة الجنود . وقالوا(٦) : تاج الملك عفافه ، وحصنه إنصافه ، وماله رعيته . لا ظفر مع بغى ، ولا ولاية حكم مع عدم فقه ، ولا سؤدد مع انتقام . والسلطان حقيق أن يعوّد نفسه الصبر والتجرع لمرارة (٩٤ب) جفاء / الرعية .

واعلم أيها الملك أنك لست بإله فلا تطمعن(٧) أن يصفو لك الناس، ولم يصفوا للإله الذى خلقهم وأنعم عليهم بأنواع النعم فقالوا فيه ما لا يليق به ، ووصفوه بما يستحيل عليه(٨) . انتهى .

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(١) لا توجد عبارة (فأقول وبالله التوفيق) فى كل الأصول ، إلا أن الناسخ فى « ج » زادها فى الهامش .
(٢) يسر كل منهم بذلك وحده : ليس بسراج الملوك .
(٣) سراج الملوك : الخراجات والوظائف السلطانية .
(٤) ب : ينبغى .
(٥) (البسيط) .
(٦) أ : وقال .
(٧) ج ود : فلا تطمئن .
(٨) هذا الفصل ملخص من أبواب مختلفة من سراج الملوك ، الباب التاسع عشر والسابع والثلاثين والثاني والأربعين .

كالعروس يبيِّض كل وقت ثيابه ويعدل عمامته. ويتقى(١) أن يمسه شيء، ينظر في عِطفيه، ليس له همة الا تزينه، فألحقــه بالطاووس فأعرض عنه. واذا رأيت حقودا لا ينسى الهفوات فألحقه بالجمال واجتنبه، تقول العرب: أحقد من جمل. واذا رأيت منافقا يبطن خلاف ما يظهر، فألحقه بعالم اليربوع، وهو فأر يكون فى البرية(٢) يتخذ جحرا تحت الأرض يقال له(٣) النافقاء وله فوهتان: يدخل من إحداهما(٤) ويخرج من الأخرى، ومنه اشتق المنافق، فأعرض عنه. وبالجملة فأحوال الناس كثيرة واصحب كلا على مقتضى حاله تستريح منه ويستريح منك. والله اعلم. (٥) انتهى.

(١) سراج الملوك: ويأنف.
(٢) ج ود: فى البر.
(٣) أ وب وج: لها.
(٤) ب وج ود: أحدهما.
(٥) الطرطوشى، سراج الملوك، ١٨٧-١٨٩ ملخصا.

نحوهم هذه الدابة طردوها ومنعوها من الدخول بينهم ، وكذلك النمام يخرج (من)[1] بين الجماعة أو يقومون[2] عنه . واذا رأيت رجلا لا يسمع العلم والحكمة وينفر[3] من مجالس العلماء والحكماء ويألف سماع أخبار الدنيا وسائر الخرافات وما يجرى فى مجالس العوام ، فألحقه بعالم الخنافس والجعلان[4] ، فانه يعجبه أكل العذرات ويألف روائح النجاسات ، فلا تراه إلا ملابسا للأخلية والرحاضات[5] وينفر[6] من روائح المسك والورد وإذا طرح عليه المسك والورد[7] مات واذا رأيت مَنْ دأبه خطف[8] الدنيا لا يستحى فى[9] الوثوب عليها ، فألحقه بعالم الحدآن[10] بأن تكن وحلك عنه فانه لا يحفظ ذمة[11] ، (٩٣ أ) واذا رأيت انسانا عليه الدَّماثة[12] / والسكينة وقد نصب شراكه لاقتناص الدنيا وأكل أموال الودائع والأمانات والأرامل واليتامى ، فألحقه بعالم الذئاب ، كما قال القائل :

ذئب تـراه مصليـا	فـاذا مـررت به ركع
يدعو وجُل دعـائه	ما للفريسـة لا تقع
عجِّل بها يـاذا العلا	إن الفؤاد قد انصدع[13]

واحترز منه كما تحترز من الذئب[14]. واذا ابتليت بصحبة انسان كذاب ، فأجعل حكمه كالميت ، والميت لا خبر له ، فلا تقبل للكذاب خبرا وألحقه بعالم النعام يدفن جميع بيضه تحت الرمل ثم يترك على واحدة على وجه الأرض ، وأخرى تحت طاقة من الرمل ، وسائر بيضه فى قعر الحفرة ، فاذا رآه الغر أخذ تلك البيضة وينصرف أو يكشف عن وجه الرمل فيجد الأخرى فيظن أن ليس هناك شىء ، والخبير بحيلته لا يزال يحفر حتى يصل الى حاجته ولا يغتر بتلك البيضة ، كذلك الكذاب اذا سمعت منه خبرا (٩٣ب) لا تصدقه ، فأعرض عنه أو فتشه حتى تبلغ الغاية / من كشفه . واذا رأيت رجلا دأبُه التزين

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(١) آ و ب : يخرج بين . ج و د : يخرج فيهم بين . والزيادة (من) يقتضيها السياق .
(٢) كل الأصول : يقوموا .
(٣) آ و ج : ينفرد . ب : يغر . وما اثبتناه من د و سراج الملوك .
(٤) والجعلان : ليس بسراج الملوك .
(٥) رحض الثوب : غسل . والرحاضة هى الغسالة . والمرحاض هو موضع الخلاء والمغتسل (لسان العرب) . وفى سراج الملوك والمرحضات . والمرحضة ايضا تعنى المغتسل . وفى نسخة سراج الملوك للطرطوشى ، طبع لجنة نشر الكتب العربية ، الطبعة الاول ، القاهرة ، سنة ١٩٣٥ ، والمراحيض .
(٦) ج : ينفرد .
(٧) سراج الملوك : وماء الورد .
(٨) سراج الملوك : حفظ .
(٩) سراج الملوك : من .
(١٠) فى كل الأصول : الحدية . والحدأة ج حدأ وحداء وحدآن : الطائر المعروف . وأما الحدية فتسمية غير فصيحة له . ويجوز ان تكون للتصغير والتسهيل .
(١١) كل الأصول : ذما . لا يحفظ ذمة : ليس بسراج الملوك .
(١٢) سراج الملوك : الأناة .
(١٣) (بمجزوء الكامل) .
(١٤) ب و ج : الذئاب .

الفصل السادس والخمسون

فى خصلة تسهل لأمير المؤمنين وغيره صحبة الخلائق أجمعين

فأقول وبالله التوفيق : واعلم أن الخصلة التى تسهل لأمير المؤمنين وغيره صحبة الخلائق أجمعين ، مستخرجة من القرآن العظيم، قال الله تعالى : « وَمَا مِن دَابَّةٍ فِي الأَرْضِ وَلاَ طَائِرٍ يَطِيرُ بِجَنَاحَيْهِ إِلاَّ أُمَمٌ أَمْثَالُكُمْ »(١). فأثبت الله تعـالى المماثلة بيننا وبين سائر البهائم ، ومعلوم أنها لم تماثلنا فى الخلق والشكل والعقل ، بل فى الأخلاق فلا أحد من الخلق إلا وفيه خلق من أخلاق البهائم (٢) . فاذا رأيت خارجا عن الخلق المعتدل فى الناس ، فانظر ما يماثله فى خلقه من البهائم(٢) فألحقه به وعامله معاملته تستريح منه ويستريح (٣) منك . فاذا رأيت الرجل الجاهل فى أخلاقه الغليظ فى طباعه ، القوى فى بدنه الذى لا يؤمن من طغيانه ، فألحقه بعالم النمور ، والعرب تقول : أجهل من نمر . وأنت اذا رأيت النمر بعدت عنه لاتخاصمه (٩٢أ) فاجعل / الرجل كذلك . واذا رأيت من فى خلقه سرقة خفية فألحقه بعالم القرد(٤) الذى يفسد رحلك ، فدع مخاصمته وصُنْ رحلك ، واذا رأيت انسانا هجّاما على أعراض الناس فألحقه بعالم الكلاب ، إذ دأبها أن تجفو من لا يجفوها وتبدء بأذية(٥) من لم يؤذها ، فلا تخاصمه اذا هجم على عرضك واجعله ككلب ينبحك ! ألست تذهب فى شأنك ولا تسبه ؟ واذا رأيت إنسانا قد جُبِل على خلاف بغير حق ، إن قلت نعم قال لا ، وان قلت لا قال نعم ، فألحقه بعالم الحمير ، فإن دأب الحمار اذا أدنيته بعد ، وإن أبعدته قرب . فأنت تستمتع بالحمار(٦) ولا تسبه ولا تفارقه . واذا رأيت رجلا يطلب عثرات الناس فألحقه بعالم الذباب يقع على الجسد فلا يطلب إلا مواضع الدم والنجاسة واطرحه ولا تلتفت اليه كما تفعل(٧) بالذباب. واذا ابتُليت بسلطان يهجم على الأموال والأرواح فألحقه بعالم الأسود(٨) وخذ حذرك منه واهرب منه كما قال النابغة : ولا قرارَ على زأرٍ من الأسد(٩) . واذا ابتليـت بانسان كثير الروغان فألحقه بعالم الثعلب (٩٢ب) / فاتركه بخلقه . واذا ابتليت بالنمام المفرق بين الأحبة فألحقه بعالم الظَّربان وهى دابة(١٠) لا يطاق فساؤها ، تقول العرب عند تفريق الجماعة : فسا ظَرّبان بينهم فتفرقوا ، وكما أن الجماعة إذا أقبلت

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(١) سورة الأنعام ، ٣٨ .

(٢) ... (٢) ساقطة من ب .

(٣) هكذا فى كل الأصول . والأصح جزمهما .

(٤) د : الفرد ، وهو تصحيف . وفى سراج الملوك . الجرذ ، وهو ضرب من الفيران .

(٥) فى كل الأصول : باذاية . والصحيح ما أثبتناه من سراج الملوك .

(٦) أ ود : تسع الحمار . ب : تستمتع الحمار . ج : تسع ولا تسبه . وما أثبتناه من سراج الملوك .

(٧) أ وب : يفعل .

(٨) ج ود : الأسد .

(٩) (البسيط) .

(١٠) أ و ب : دوبية .

واعلم أن إفشاء سر غيرك أقبح من إظهار سر نفسك ، لأنه يبوح بإحدى وصمتين[1] : إما الخيانة (٩١ب) إن كان مؤتمنا ، أو النميمة / إن كان مستخبرا . وقال بعض الحكماء لابنه : يا بنى كن جواداً بالمال في مواضع الحق ، ضنينا بالأسرار عن جميع الخلق[2] . انتهى .

(١) ج و د : وصمتين .
(٢) الطرطوشى ، سراج الملوك ، ١٧٣-١٧٧ باختصار .

الفصل الخامس والخمسون

فى كتمان السر

(٩٠ب) فأقول وبالله التوفيق : قال الله تعالى حكاية عن يعقوب عليه السلام : ـ « يَابُنَيَّ لَاتَقْصُصْ رُؤْيَاكَ عَلَى إِخْوَتِكَ فَيَكِيدُوا لَكَ كَيْدًا » (١) فلما أفشى يوسف رؤياه بمشهد امرأة يعقوب أخبرت إخوته فحلّ به ما حلّ . وفى الحديث : استعينوا على قضاء الحوائج(٢) بالكتمان. واعلم أن كتمان السر من الخصال المحمودة فى جميع الخلق ، ومن اللوازم فى حقوق الملوك ، ومن الفرائض الواجبة على الوزراء والجلساء والأتباع ، وقال على بن أبى طالب رضى الله عنه : سرك أسيرك مالم تتكلم ، فان تكلمت به صرت أسيره ، واعلم أن الأمناء على الأسرار أشد تعذراً وأقل وجودا(٣) من أمناء الأموال ، وحفظ الأموال أيسر من كتم الأسرار ، والرجل يستقل بالحمل الثقيل ويمشى به ولا يستطيع كتم السر . من حصر سره ظفر بحاجته وسَلِم من السطوات . سرُّك من دمك فلا تُجْرِه فى غير أوداجك ، وإذا تكلمت به (٩١أ) فقد أرقته . وقال عمر بن عبد / العزيز : القلوب أوعية والشفاه أقفالها والألسن مفاتحها(٤) . فليحفظ كل امرىء مفاتح(٥) سره . ويقال أصبر الناس من صبر على كتمان سره فلم يبده لصديقه ، فيوشك أن يصير عدوا يوما ما . وقال عمرو بن العاص : ما أفشيت سرى على رجل فأفشاه علىّ فلمته ، إذا ضاق صدرى به فصدره أضيق له ، وانشدوا :

اذا المرء أفشى سره عند غيره(٦)	ولام عليه غيره فهو أحمق
اذا ضاق صدر المرء عن كتم سره	فصدر الذى يستودع السر أضيق(٧)

وكان يقال : صدور الأحرار قبور الأسرار . وقال الحكيم : ما كتمته من عدوك فلا تطلعن عليه صديقك ، وان كان لا بد فليكن لصديق مستشار ناصح أمين (على(٨)) الأسرار ذى عقل ودين ومودة ، فلا تودع سرك عند من يستدعيه(٩) ، فان طالب الوديعة خائن .

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(١) سورة يوسف ٥ .
(٢) سراج الملوك . حوائجكم .
(٣) كل الأصول . أشد وأقل وجودا وما أثبتناه من سراج الملوك .
(٤) أ : مفاتيحها .
(٥) أ : مفاتيح . سراج الملوك : مفتاح .
(٦) سراج الملوك : سره بلسانه .
(٧) (الطويل) .
(٨) الزيادة من سراج الملوك .
(٩) د : من يشتد عليه .

قسمان : صبر على ما أمر الله (به)(١) وصبر على ما نهى الله عنه(٢) .

ومن الخصال المحمودة للأمراء وغيرهم الشكر . قال تعالى : « وَقَلِيلٌ مِّنْ عِبَادِيَ الشَّكُورُ »(٣) والشكر ثلاث مراتب . شكر القلب ، وشكر اللسان ، وشكر الجوارح ، فالأول(٤) أن تعلم أن النعمة من الله وحده وعليه قوله تعالى: «وَمَا بِكُم مِّن نِّعْمَةٍ فَمِنَ اللَّهِ »(٥) . والثانى وهو شكر اللسان وهو أن (٩٠ أ) / تحدث بذلك(٦) ، وعليه قوله تعالى : « وَأَمَّا بِنِعْمَةِ رَبِّكَ فَحَدِّثْ »(٧). وحقيقته الثناء على المحسن بذكر إحسانه ، والثالث وهو شكر الجوارح إعطاء حق الله فى كل جارحة والتعبد له بجميعها ، وعليه قوله تعالى : « اعْمَلُوا آلَ دَاوُدَ شُكْرًا » (٨) .

ومن الخصال المحمودة للأمراء وغيرهم اللين وترك الفظاظة ، قال تعالى : « وَاخْفِضْ جَنَاحَكَ لِمَنِ اتَّبَعَكَ مِنَ الْمُؤْمِنِينَ »(٩) وقال تعالى : « وَلَوْ كُنتَ فَظًّا غَلِيظَ الْقَلْبِ لَانفَضُّوا مِنْ حَوْلِكَ »(١٠). وخصال الخير كثيرة لا تحصى وإنما رتبتُ هذه العشرة تبركا بعدِّ على بن أبى طالب رضى الله عنه حين قال :

إن المكارم أخلاق مطهرة	فالعقل أولها والدين ثانيها
والعلم ثالثها والحلم رابعها	والجود خامسها والعرف سادسها(١١)
والبر سابعها والصبر ثامنها	والشكر تاسعها واللين عاشرها(١٢)

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(١) (به) : زيادة من سراج الملوك .
(٢) سراج الملوك ، ١٦٢-١٦٥ .
(٣) سورة سبأ ، ١٣ .
(٤) ج ود : الأول .
(٥) سورة النحل ، ٥٣ .
(٦) كل الأصول : ذلك .
(٧) سورة الضحى ، ١١ .
(٨) سورة سبأ ، ١٣ . سراج الملوك ، ١٧٨-١٨٠ .
(٩) سور الشعراء ، ٢١٥ .
(١٠) سورة آل عمران ، ١٥٩ .
(١١) سراج الملوك : سادبها .
(١٢) سراج الملوك : عاشيها . (البسيط) . الطرطوشى ، سراج الملوك ، ١١٦ .
ملحوظة : لم يذكر المؤلف مراجعه فى هذا الباب الرابع والخمسين . والملاحظ أن كل ما أورده من سراج الملوك الطرطوشى . غير أنه كما ذكر ، رتب الخصال العشرة المحمودة تبعا لعد على بن أبى طالب تبركا به ولم يتبع ترتيب الطرطوشى لها .

واعلم أن الجود قسمان : دنيوى وهو البذل والعطاء والايثار وسماحة النفس ، قال تعالى : « وَمَن يُوقَ شُحَّ نَفْسِهِ فَأُوْلَئِكَ هُمُ الْمُفْلِحُونَ »(١) وعلامته ترك الإدخار وبغض(٢) جمع المال وتعاهد الاخوان مسرور قلبك بذلك ، ودينى وهو أن تسخو بنفسك ، بأن تتلفها لله تعالى(٣) فى عبادته والجهاد فى سبيله (٤) من غير كراهية ، لا تريد بذلك إلاّ وجهه .وقيل لعمر بن الخطاب مَن السيد ؟ قال : الجواد . وكان مورق العجلى يتلطف فى إدخال المعروف(٥) على إخوانه ، يضع عند أحدهم ألف درهم ويقول امسكوها حتى أعود اليكم ، ثم يرسل اليهم أنتم منها فى حل(٦) .

ومن الخصال المحمودة للأمراء وغيرهم العرف وهو جامعها قال تعالى : « خُذِ الْعَفْوَ وَأْمُرْ بِالْعُرْفِ وَأَعْرِضْ عَنِ الْجَاهِلِينَ »(٧) . وهو أن تعفو عمن ظلمك ، وتعطى من حرمك ، وتصل من قطعك .

ومن الخصال المحمودة للأمراء وغيرهم البر . قال تعالى : « وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى (٨٩ب) وَلاَ تَعَاوَنُوا / عَلَى الإِثْمِ وَالْعُدْوَانِ » (٨) .

ومن الخصال المحمودة للأمراء وغيرهم الصبر . واعلم أن الصبر زمام سائر الخصال قال تعالى : « إِنَّمَا يُوَفَّى الصَّابِرُونَ أَجْرَهُمْ بِغَيْرِ حِسَابٍ » (٩) وقال تعالى : وَتَمَّتْ كَلِمَةُ رَبِّكَ الْحُسْنَى عَلَى بَنِي إِسْرَائِيلَ بِمَا صَبَرُوا » (١٠) وقال تعالى : وَإِن تَصْبِرُوا وَتَتَّقُوا فَإِنَّ ذَلِكَ مِنْ عَزْمِ الأُمُورِ »(١١). وقال تعالى : « يَاأَيُّهَا الَّذِينَ آمَنُوا اصْبِرُوا وَصَابِرُوا »(١٢). وقال تعالى : « وَاسْتَعِينُوا بِالصَّبْرِ وَالصَّلاَةِ »(١٣) . وقال تعالى : إِنَّ اللهَ مَعَ الصَّابِرِينَ(١٤)» . وهو فى القرآن كثير . وقال رسول الله صلى الله عليه وسلم : الصبر نصف الايمان ، والصبر عند الصدمة الاولى . والصبر

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(١) سورة الحشر ٩ .
(٢) د : نقض جمع .
(٣) ج وسراج الملوك : أن تتلفها فى عبادته .
(٤) والجهاد فى سبيله : ليس بسراج الملوك .
(٥) سراج الملوك : الرفق .
(٦) سراج الملوك ، ١٣٨ .
(٧) سورة الأعراف ، ١٩٩ .
(٨) سورة المائدة ، ٢ .
(٩) سورة الزمر ، ١٠ .
(١٠) سورة الأعراف ، ١٣٧ .
(١١) سورة آل عمران ، ١٨٦ .
(١٢) سورة آل عمران ، ٢٠٠ .
(١٣) سورة البقرة ، ٤٥ .
(١٤) سورة البقرة ، ١٥٣ .

السلطان خصوصا وفي الناس عموما محبة (١) العلم والشوق الى استماعه والتعظيم لحملته(٢) ، وهو من أوكد ما يتحبب به الى الرعية . وإذا كان الملك خاليا من العلم ركب هواه وأضر(٣) برعيته كالدابة بلا رسن تمر في غير طريق ، وقد تتلف ما تمر عليه (٤) . فالمراتب العلية أحوج الى مجالسة العلماء وصحبة(٥) الفقهاء ، ودراسة كتب العلوم(٦) والحكم ، ومطالعة دواوين العلماء وسير الحكماء ، لأن السلطان قد نصب نفسه لممارسة أخلاق الناس وفصل خصوماتهم وتعاطي حكوماتهم ،وكل ذلك يحتاج الى علم بارع وبصيرة قوية(٧) ودراسة طويلة ، فكيف تكون حـاله ان لم يُعِدَّ لهذه الأمور عدتها ولم يقدم لها أهبتها ؟ ولأن من سواه لا يعدم من يعارضه ويذكر له مساويه ويخالفه في المذاهب ، فيكون ذلك مما يعينه على رياضة نفسه وتعلم (٨٨ب) مراشده ، بخلاف السلطان ، فإن ارتفاع درجته يقطع عنه جميع ذلك إذ لا يجالسه الا / معظم لقدره ساتر لمساويه، مادح له بما ليس فيه ، وإنما جوابهم له صَدَق الأمير (٨) .

ومن الخصال المحمودة للأمراء وغيرهم الحلم قال تعالى: « إِنَّ إِبْرَاهِيمَ لَحَلِيمٌ أَوَّاهٌ مُنِيبٌ »(٩) وقال لنبيه : « فَاصْفَحِ الصَّفْحَ الْجَمِيلَ » (١٠) وفي الحديث وجبت محبة الله على من أغضب فحلم. ومن أشد الناس حلما اسماعيل إذ قيل له : « إِنِّي أَرَى فِي الْمَنَامِ أَنِّي أَذْبَحُكَ فَانْظُرْ مَاذَا تَرَى قَالَ يَا أَبَتِ افْعَلْ مَا تُؤْمَرُ سَتَجِدُنِي إِنْ شَاءَ اللَّهُ مِنَ الصَّابِرِينَ » (١١) . وقال الأحنف : وجدت الحلم أنصر لي من الرجال ، وقال الأحنف أيضا : إياكم ورأي الأوغاد (١٢) ،قالوا ومن هم ؟ قال : الذين يَرَوْن الصفح والعفو عارا (١٣) .

ومن الخصال المحمودة للأمراء وغيرهم الجود ، وهو ألا يصعب عليك البذل ، . تعالى : « وَيُؤْثِرُونَ عَلَى أَنْفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ »(١٤) وقال صلى الله عليه وسلم . السخي قريب من الله ، قريب من الناس ، قريب من الجنة ، بعيد من النار ، والبخيل بعيد من الله بعيد من الناس (٨٩أ) بعيـد من الجنة ، قريب / من النار .

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(١) ج ود : صحبة .
(٢) آ و ب : علمه .
(٣) كل الأصول : أضل . وما أثبتناه من سراج الملوك لأنك تقول أضر به ولا تقول أضل به إلا بمعنى دفن وهو نادر (أنظر اللسان) .
(٤) سراج الملوك : به .
(٥) أ و د : محبة .
(٦) أ : العلم .
(٧) سراج الملوك : وبصيرة بالعلم قوية .
(٨) سراج الملوك ، ١٠٧ .
(٩) سورة هود ، ٧٥ .
(١٠) سورة الحجر ، ٨٥ .
(١١) سورة الصافات ، ١٠٢ .
(١٢) ب : الأوغاد السفلين .
(١٣) سراج الملوك ، ١٣٨-١٤٢ .
(١٤) سورة الحشر ، ٩ .

الفصل الرابع والخمسون

فى الخصال المحمودة للأمراء وغيرهم

فأقول وبالله التوفيق : من الخصال المحمودة للأمراء وغيرهم العقل ، قال صلى الله عليه وسلم : أفضل الناس أعقل الناس . وعن أبي الدرداء قال : قال النبى صلى الله عليه وسلم : يا عُوَيْمر ازدد عقلا (٨٧أ) تزدد من ربك قربا ، قلت بأبي وأمي أنت ، ومن لى بالعقل ؟ قال / : اجتنب محارم الله ، وأدِّ فرائض الله تكن عاقلا ، ثم تنفّل صالح الأعمال تزدد فى الدنيا عقلا وتزدد من ربك قربا . انتهى . فالعاقل من عقله فى إرشاد ، ومن رأيه فى إمداد ، فقوله سديد ، وفعله حميد ، والجاهل من جهله فى إغواء[1] فقوله سقيم وفعله ذميم ، وفائدة العقل الاستشهاد بما شاهد [2] على ما غاب ، فمن كان يستشهد بما شاهد[2] على ما غاب سُمّى عاقلا ولكن للعقل آفات تمنعه النفع ، وهى الهوى والحسد والكبر ونحوها . فالحيوان أربعة : ملائكة لهم عقل بلا شهوة ولا هوى ، وآدميون لهم عقول وشهوات وهوى ، والشياطين والجن فهم أيضا كذلك . والبهائم لها شهوات فقط ، فغلبت شهوات الشياطين عقولهم فتخلقوا بالأخلاق المذمومة[3] من الكبر والعجب والمقت والفخر والدعوى والحسد والأذية[4] وغير ذلك ، وأما الآدميون والجن (٨٧ب) فمنهم من غلب عقله على شهوته فلّحق بالملائكة كالأنبياء والرسل / والأولياء ، ومنهم من كان عقله مغلوبا بالشهوات المباحات من المطاعم والملابس والمراكب والنساء والخيل المسوّمة والأنعام[5] فلحق بالبهائم ، ومنهم من كان عقله مغلوبا بالشهوات المحرمات من الكبر والعجب والحسد والغش الى غير ذلك فلحق بالشياطين[6] .

ومن الخصال المحمودة للأمراء وغيرهم الدين ، وهو ثمرة العقل وهو الشاهد على كل خصال الخير ، فمن لا دين له لا عقل له ولا له خصلة محمودة . ومن الخصال المحمودة للأمراء وغيرهم العلم .

واعلم أن أحوج الناس الى النفقة أكثرهم عيالا ، وأتباعا وحشما وأصحابا ، والخلق كلهم مستملون من السلطان الخلائق السنية ، . . . مفتقرون اليه فى الأحكام ، وقطع التشاجر وفصل الخصام ، فهو أحوج (٨٨أ) خلق الله الى معرفة العلوم وجمع الحكم . وشخص بلا علم كبلد بلا أهل ، وأفضل مافى /

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(١) أ : إغوائه . ب وج : غوائه . د : أغواله . وما أثبتناه من سراج الملوك .
(٢) ج : تشهد .
(٣) أ وب : الذميمة .
(٤) فى كل الأصول : الإذايه . وما أثبتناه من سراج الملوك .
(٥) ب ود : والأنعم .
(٦) سراج الملوك ، ١١٢ .

الفصل الثالث والخمسون

فى صفات لاتدوم الدولة معها

فأقول وبالله التوفيق : قال الله تعالى : « وَإِذَا أَرَدْنَا أَن نُّهْلِكَ قَرْيَةً أَمَرْنَا مُتْرَفِيهَا فَفَسَقُوا فِيهَا فَحَقَّ عَلَيْهَا الْقَوْلُ فَدَمَّرْنَاهَا تَدْمِيراً »(١) . وفى ضياء الخلفاء : فاذا أراد الله خراب الدولة أفضى أمرها الى أبناء السلاطين المسرفين الذين كانت همتهم عظم شأن الملك ونيل الشهوات والدخول (٨٦ أ) فى المعاصى ، فيسلبهم الله العز بسبب ذلك(٢) . وسئل بعض الناس(٣) ما بال / ملك آل ساسان صار الى ما صار اليه . . . ؟ قال : لأنهم قلّدوا كبار الأعمال صغار الرجال . وفى(٤) هذا قالت الحكماء : موت ألف من العليّة أقل ضررا(٥) من ارتفاع واحد من السفلة . وفى الأمثال : زوال الدول فى اصطفاء(٦) السفل . وقال الشافعى رحمه الله : أظلم النـاس لنفسه اللئيم ، إذا ارتفع جفا أقاربه ، وأنكر معارفه ، واستخف بالأشراف ، وتكبر على ذوى الفضل . وسئل بعض الملوك بعد سلب ملكهم ما الذى سلب ملككم ؟ قال : شغلتنا لذاتنا عن التفرغ لمهماتنا ، ووثقنا بكفاتنا فآثروا مرافقهم علينا ، وظلم عمالنا رعيتنا فتمنّوا الراحة منا(٧) .

ومن أسرع الخصال هدما للملك إيثار قبيلة دون الأُخرى ، والمحاباة لقوم دون قوم ، وتقريب من ينبغى أن يباعد ، ومباعدة من ينبغى أن يقرب . وسئل ملك بعد زوال ملكه ما أذهب ملكك ؟ فقال : استبدادى برأيى وإغفالى عن(٨) استشارتى . ومنها الكبر والعجـب يسلبان الفضائل . . . ست(٩) لا تغتفر (٨٦ب) من السلطان : الكذب / ، والحسد ، والخلف ، والحدة ، والبخل ، والجبن . ومنها احتجاب الملك عن رعيته ، لأن الظـالم إذا أمن ألاّ يصل المظلوم الى السلطان ازداد ظـلما . ولا تزال الرعية ذات سلطان واحد ما وصلوا الى سلطانهم ، فاذا احتجب فهناك سلاطين كثيرة .

يأيها الملك احتجبت عن الرعية بالحجاب والأبواب(١٠) وجعلت دونهم جبالا مشيدة ، وباب الله مفتوح للسائلين ليس هناك حاجب ولا بواب فالملك يدوم مع الكُفر ، ولا يدوم مع الظلم(١١) . انتهى .

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(١) سورة الاسراء ، ١٦ .
(٢) الطرطوشى ، سراج الملوك ، ٩٣ .
(٣) سراج الملوك : وسئل بزرجمهر .
(٤) سراج الملوك : وعن .
(٥) : ضرارا . ج ود : ضرا .
(٦) سراج الملوك : باصطناع .
(٧) المرجع السابق ، ٩٤ .
(٨) د : من استشارتى . سراج الملوك : وإغفال استشارتى .
(٩) سراج الملوك : ست خصال .
(١٠) د : والبواب .
(١١) الطرطوشى ، سراج الملوك ، ٩٤-٩٦ باختصار .

لا تظلمنّ (١) إذا ما كنت مقتدرا   فالظلم مصدره يفضى الى النـدم
تنام عينك (٢) والمظلوم متصب   يدعو عليك وعين الله لم تنم
لا شك دعوة مظلوم تحل بها (٣)   دار الهوان ودار الذل والنقم (٤)

(٨٥ أ) وقال بلال بن سعيد : اتقوا الله فيمن لا ناصر له الا الله / . ورُوى أن النبى صلى الله عليه وسلم قال : يقول الله عز وجل : اشتد غضبى على من ظلم من لم يجد له ناصرا غيرى (٥) . انتهى .

وأما منع النميمة فقد قال تعالى : « إن جاءَكُمْ فاسِقٌ بِنَبَإٍ فَتَبَيَّنُوا (٦) » الآية : وقال حذيفة سمعت النبى صلى الله عليه وسلم يقول: لا يدخل الجنة قتّات (٧). ورُوى أن النبى صلى الله عليه وسلم قال: ألا أخبركم بشراركم ؟ قالوا : بلى يارسول الله ، قال: من شراركم المشّاءون بالنميمة المفسدون بين الأحبة، الباغون العيوب (٨) . وروى ابن قتيبة أن النبى صلى الله عليه وسلم قال : الجنة لا يدخلها ديّوث ولا قلّاع . فالديوث الذى يجمع بين النساء والرجال ، والقلاع الذى يقلع (٩) الناس عند الأمراء ، يقصد المتمكن عند السلطان فلا يزال يقع فيه حتى يقلعه . ولما لقى أسقف نجران عمر بن الخطاب رضى الله عنه قال : يا أمير (٨٥ب) المؤمنين ، احذر قاتل الثلاثة ! قال له عمر : ومن هو ؟ قال : الرجل الذى يأتى الامام / بالحديث الكذب فيقبله فيكون قد قتل نفسه وصاحبه وإمامه . وروى أن رجلا سعى بجاره عند الوليد بن عبد الملك ، فقال له الوليد : إن شئت أرسلنا معك ، فان كنت صادقا أبغضناك ، وان كنت كاذبا عاقبناك ، وان شئت الآن تاركناك ، قال : فاتركنى يا أمير المؤمنين ؛ فقال قد تركناك . ولله در الاسكندر حين وشى اليه واش برجل ، فقال : إن شئت قبلناك على صاحبك بشرط أن نقبله عليك ، وان شئت أقلناك ، فقال أقلنى . قال : قد أقلناك كُفَّ عن الشر يكفَّ عنك الشر (١٠) . انتهى .

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(١) ج : لا تظلمن .
(٢) ج ود : عيناك .
(٣) كل الأصول : به وما أثبتناه من سراج الملوك .
(٤) (البسيط) .
(٥) كل ما أورده المؤلف فى هذا الباب الثانى والخمسين ورد فى كتاب سراج الملوك للطرطوشى فى الباب السادس والخمسين ص ٢٥٥-٢٥٨ .
(٦) سورة الحجرات ، ٦ .
(٧) صحيح مسلم ، ٢ : ١١٢ .
(٨) كل الأصول : العيوب . وما أثبتناه من سراج الملوك . وفى القاموس بغا الشىء بغوا نظر اليه كيف هو .
(٩) ب : يقلم . سراج الملوك : والقلاع الساعى الذى يقع فى الناس عند الأمراء .
(١٠) وجاء هذا الجزء الثانى من الباب الثانى والخمسين مطابقا لسراج الملوك ص ٢٦٦-٢٦٨ .

الفصل الثاني والخمسون

في منع الظلم والنميمة

(٨٤أ) فأقول وبالله التوفيق : قال الله تعالى : « وَلَا تَحْسَبَنَّ / اللَّهَ غَافِلًا عَمَّا يَعْمَلُ الظَّالِمُونَ إِنَّمَا يُؤَخِّرُهُمْ لِيَوْمٍ تَشْخَصُ فِيهِ الْأَبْصَارُ »(١) . وفي ضياء الخلفاء : كفى بهذه الآية وعيدا للظالم وتعزية للمظلوم . وقال كعب لأبي هريرة : في التوراة من يظلم يخرب بيته . فقال أبو هريرة : وذلك في كتاب الله : « فَتِلْكَ بُيُوتُهُمْ خَاوِيَةً بِمَا ظَلَمُوا »(٢) فالظلم أدعى شيء الى سلب النعم وحلول النقم . وروى ابن عباس أن النبي صلى الله عليه وسلم قال : اتقوا دعوة المظلوم فانها ليس بينها وبين الله حجاب(٣) . وروى أبو هريرة قال: قال النبي صلى الله عليه وسلم : من كانت لأخيه عنده مظلمة من عرضه أو ماله فليتحلل(٤) منه بقدر مظلمته قبل يوم لا يكون فيه درهم ولا دينار ، ان كان له عمل صالح أخذ منه بقدر مظلمته ، وان لم تكن له (٥) حسنات ، أخذ من سيئات صاحبه فيحمل عليه . وروى (٨٤ب) سعيد بن زيد قال: سمعت النبي صلى الله عليه وسلم يقول: / من ظلم شبرا من الأرض طوقه من سبع أرضين (٦) . قال أبو جعفر معناه أنه يقلب شجاعا أقرع فيطوقه . وروى أنس (٧) أن النبي صلى الله عليه وسلم قال : انصر أخاك ظالما أو مظلوما . فقال يا رسول الله،(٨) ننصره(٩) مظلوما ، فكيف ننصره(١٠) ظالما ؟ قال : تأخذ فوق يده(١١) . وروى مسلم في صحيحه ان النبي صلى الله عليه وسلم قال : من اقتطع حق امرىء مسلم بيمينه فقد أوجب الله له النار وحرم عليه الجنة. فقال الرجل(١٢) : وان كان شيئا يسيرا يا رسول الله ؟ قال : وان كان قضيبا من أراك (١٣)

وروى أن بعض الملوك رقم على بساطه هذه الأبيات :

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(١) سورة ابراهيم ، ٤٢ .

(٢) سورة النمل ، ٥٢ .

(٣) صحيح البخاري ، ٣ : ١٦١ .

(٤) هكذا في كل الأصول وفي البخاري : فليتحلله منه .

(٥) له : ليس في ج و د .

(٦) صحيح البخاري ، ٣ : ١٦١ .

(٧) أ : عن أنس .

(٨) صلى الله عليه وسلم : زيادة في ب وج و د .

(٩) أ وب : انصره .

(١٠) أ وب : تنصره .

(١١) المصدر السابق .

(١٢) مسلم : رجل .

(١٣) صحيح مسلم ، ٢ : ١٥٧ .

في المنكر وكان العفو حينئذ مفسدة[1] .

قال ابن العربي في أحكامه عند قوله تعالى : « وَالَّذِينَ إِذَا أَصَابَهُمُ الْبَغْيُ هُمْ يَنْتَصِرُونَ »[2] ذكر الله الانتصار في البغي في معرض المدح ، وذكر العفو على الجرم في موضع آخر وفي معرض المدح . . وذلك راجع الى اختلاف الأحوال ، فان كان الباغي معلنا بالفجور ، وقحا على الجمهور ، مؤذيا للصغير (٨٣أ) والكبير ، فالانتقام منه أفضل ، وفي مثله قال / ابراهيم النخعي : يُكره للمؤمنين أن يذلوا أنفسهم فيجترىء عليهم الفسّاق ، . . . وان كان انتقامه يثير فتنة أو وقع الجرم ممن كان يعرف الذلة ، وجاء يسأل المغفرة فالعفو هنا أفضل ، وفي مثله نزلت : « وَأَن تَعْفُوا أَقْرَبُ لِلتَّقْوَى »[3] وأمثالها[4] انتهى .

وفي ضياء الخلفاء : واعلم أن الله أقام فرائض وسننا ونهى عن محرمات ، ثم قدر في كل خصلة عند مخالفته حدا محدودا ، ونهى أن يتجاوز ذلك الحد ، فلا يُقتل من استحق القطع أو الحبس أو الأدب ، ولا يُقطع من استحق القتل ، قال معاوية لا أستعين بسيفي فيما أغناني عنه سوطي ولا بسوطي فيما أغناه لساني . وكان الخلفاء يؤدبون الناس على قدر منازلهم ، فمن عثر من ذوي المروءة أقيلت عثرته ولم يُقابل بشيء ، ومَن كان من سواهم[5] قوبل بقدر منزلته وهفوته ، كأن يقام قائما في مجلس يقعد فيه نظراؤه ، (٨٣ب) فيكون تأديبه . وآخر يشق جيبه ، وآخر / تنزع عمامته من رأسه ويطاف به في المسجد ، وآخر يكلم بالكلام الذي فيه غلظة[6] . وفي المختصر : وعَزَّرَ الامامُ لمعصية الله[7] أو لحق آدَمِيٍّ حَبْساً ، ولوْماً ، وبالإقامة ، ونَزْعِ العمامة ، وضَرْبِه[8] بسوط ، أو غيره وإنْ زاد على الحَدِّ ، أو أتى على النفس[9] . قال الخرشي في هذا المحل : والتعزير يكون بالحبس واللوم وبالإقامة من المجلس والمحافل . ومنهم من تُنزع عمامته ، ومنهم من تحل إزاره ومنهم من فسّر « الإقامة » بأن يقف على قدميه ثم يقعد ، وليس مراداً وإلا كان يقول « وبالقيام » ،ومنهم مَنْ تعزيرهُ بالدّرة[10] والقضيب والعصا وضرب القفا بالأكف مجردا . وإذا أدّى[11] اجتهاد الامام الى أن يُعزّره بما يزيد على الحد أو يأتي على هلاك النفس، فانه[11] يفعل ولا ضمان عليه حيث لم يقصد الهلاك ابتداء بل ظن السلامة[12] . انتهى .

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(١) عبارة : وكان العفو حينئذ مفسدة : ليست بسراج الملوك . مع ملاحظة أن المؤلف لم يذكر بعد في هذا الفصل أنه ينقل من ضياء الخلفاء .

(٢) سورة الشورى ، ٣٩ .

(٣) سورة البقرة ، ٢٣٧ .

(٤) ابن العربي ، أحكام القرآن ، ٤ : ١٦٥٧ . وقد اختصر المؤلف كثيرا من عبارات ابن العربي .

(٥) ج ود : ومن كان سواهم .

(٦) الطرطوشي ، سراج الملوك ، ١٣٩ .

(٧) ب وج ود : الله تعالى . وما أثبتناه من أ والمختصر .

(٨) المختصر : وضرب .

(٩) المختصر ، ٢٣٢ .

(١٠) الخرشي : بالضرب بالدرة .

(١١) .... (١١) ساقطة من د .

(١٢) الخرشي ، ٥ : ٣٥٢ .

الفصل الحادي والخمسون

في العفو والصفح(1) والمؤاخذة والادب

فأقول وبالله التوفيق : قال الله تعالى: «خُذِ الْعَفْوَ وَأْمُرْ بِالْعُرْفِ وَأَعْرِضْ عَنِ الْجَاهِلِينَ»(2) وقال تعالى : «وَالْكَاظِمِينَ الْغَيْظَ وَالْعَافِينَ عَنِ النَّاسِ وَاللهُ يُحِبُّ الْمُحْسِنِينَ» (3) وقال تعالى : «وَلْيَعْفُوا وَلْيَصْفَحُوا أَلَا تُحِبُّونَ أَن يَغْفِرَ اللهُ لَكُمْ»(4) وقال تعالى : «وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُم بِهِ وَلَئِن صَبَرْتُمْ لَهُوَ خَيْرٌ لِّلصَّابِرِينَ»(5) وقال تعالى : وَلَمَن صَبَرَ وَغَفَرَ إِنَّ ذَٰلِكَ لَمِنْ عَزْمِ الْأُمُورِ»(6) وقال تعالى «وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِّثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللهِ(7)» . قالت عائشة رضى الله عنها : ما رأيت النبى صلى الله عليه وسلم منتصرا لنفسه من مظلمة ظلمها قط ، غير أنه إذا انتُهِك شيء من محارم الله فلا يقوم لغيظه شيء(8) . وقال صلى الله عليه وسلم : ارحموا من فى الأرض يرحمكم من فى السماء(9) . وقال (82ب) الحكماء : لا سؤدد مع انتقام ولا رياسة مع / عزازة نفس وعُجب (10). واعلم أنك إن تخطىء فى العفو فى ألف قضية ، خير من أن تخطىء فى العقوبة فى قضية واحدة . انتهى .

واذا بغى بـاغٍ عـليـك بجهلـه ... فاقتُله بالمعـروف لا بالمنكـر (11)

فالجانى إن كان مذنبا وَسِعَهُ العفو ، وإن كان بريئا وَسِعَهُ العدل . وقال المنصور : عقوبة الأحرار التعريض ، وعقوبة الأشرار التصريح(12)، واقبل العذر . . . إلا أن يكون ممن أوْجبت المروءة قطيعتَه ، أو يكون فى قبولك عذرَه تشجيعُه على المنكر أو عونُه عليه (13)،فيكون قبول العذر حينئذ اشراكا(14)

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(1) ج : والصلح .

(2) سورة الأعراف ، 199 .

(3) سورة آل عمران ، 134 .

(4) سورة النور ، 22 .

(5) سورة النحل ، 126 .

(6) سورة الشورى ، 43 .

(7) سور الشورى ، 40 .

(8) انظر الطرطوشى ، سراج الملوك ، 128 .

(9) مسند الامام أحمد بن حنبل ، 9 : 256 . وانظر المرجع السابق .

(10) رواه الطرطوشى فى سراج الملوك عن حكماء الهند .

(11) (الكامل) .

(12) المرجع السابق ، 142 .

(13) الطرطوشى : تشجيعه على المكروه أو عونه على الشر .

(14) ب وج ود : إشراكا . وما أثبتناه عن أ والطرطوشى .

سنة بعدَ النظرِ (1) . انتهى . والى هذا أشار الشيخ أبوبكر بن عاصم القيسى فى تحفة الحكـام بقوله :—

وقد أتى قولٌ (2) بضـرب عـام   من حين يأسٍ منـه لا القيـامِ
ويقسـم المـال عـلى مماتـه   وزوجـة تعتـد مـن وفـاتـه
وذا بـه القضاء فـى الأنـدلـس   لمن مضى فمُقْتَفيهم مُؤْتَسِى (3)

وأما حكم غسل الشهداء وتكفينهم والصلاة عليهم ، فقد قال ابن جزى فى القوانين : فالشهيد إذا مات فى معترك الجهاد لم يغسل ولم يكفن ولم يُصَلَّ عليه . . . فان قتل فى غير المعترك ظلما أو أخرج من المعترك حياً ولم تنفذ مقاتلُه ثم مات ، غُسل وصُلِّى عليه فى المشهور وفاقاً للشافعى . ومن قتل فى المعترك فى قتال المسلمين غسل وصُلى عليه ، فإن كان الشهيد جُنبا فاختلف فى غسله (4) . انتهى . وفى المختصر : ولا يُغسلُ شهيدُ مُعْتَرَكٍ فقطْ ، ولو ببلد الاسلام أولم يُقاتِلْ ، وإنْ أجْنَبَ على الأحسن ، لا إن (182 أ) رُفع حيّاً وإن أنفذتْ مَقَاتِلُهُ إلاَّ المغمورَ . ودُفِنَ بثيابه إنْ سَتَرَتْهُ ، وإلاّ زِيدَ بخُفٍ / وقَلَنْسُوَةٍ ومِنْطَقَةٍ قلَّ ثَمَنُها ، وخاتمٍ قلَّ فَصُّهُ ، لا دِرْعٍ وَسِلاَحٍ (5) . انتهى .

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(1) المختصر ، 175 و 176 .
(2) ج ود : القول .
(3) (الرجز) ابن عاصم ، تحفة الحكام ، 50 .
(4) ابن جزى ، القوانين ، 98 .
(5) المختصر ، 56 .

فموقوف لا يورث عنه حتى يعلم موته أو يعمر [1] فيأتي عليه من الزمان ما [2] لا يعيش الى مثله واختلف في حد ذلك وفي المشهور سبعون سنة وقيل ثمانون سنة وقيل تسعون وقيل مائة [3] وقال أبو حنيفة مائة وعشرون . وذلك كله من أول عمره ، فان فقد وهو ابن سبعين تربص به عشرة أعوام بعدها [4] على المشهور .

(٨٠ب) / وأما المفقود في بلاد العدو فحكمه حكم الأسير لا تتزوج امرأته ولا يقسم [5] ماله حتى يأتي عليه من الزمان مالا يعيش الى مثله الا عند أشهب ، فهو عنده كالمفقود في بلاد المسلمين في زوجته وماله وأما المفقود في القتال مع الكفار فحكمه كالأسير في المشهور ، وقيل كالمفقود ، وقيل يحكم في زوجته بحكم المقتول بعد سنة [6] ثم تعتد وتتزوج. ويحكم في ماله بحكم المفقود فيعمر مالا يعيش الى مثله .

وأما المفقود في الفتن ففيه قولان . أحدهما أنه يحكم له بحكم المقتول فتعتد امرأته ويقسم ماله . ثم اختلف هل ذلك من يوم المعركة أو بعد التلوم قدر ما ينصرف من هرب [7] أو انهزام ، فيتلوم في البعد سنة وفي القرب أقل . واختلف أيضا هل تدخل العدة في التلوم أم لا . والقول الثاني أنه يضرب له أجل (٨١أ) سنة ثم تعتد امرأته / ويقسم ماله [8] . انتهى . وفي المختصر : ولزوجة المفقود الرَّفعُ للقاضي ، والوالي ، ووالي الماء ، والا فلجماعة المسلمين ، فيؤجَّل (الحر) [9] أربع سنين ، إن دامت نفقتُها ، والعبد نصفَها من العجز عن خبره ، ثم اعتدَّت كالوفاة

ثم قال بعد كلام : وبقيت أمُ وَلَدِه ، ومالُه ، وزوجةُ الأسير ، ومفقودِ أرض الشرك للتعمير ، وهو سبعون، واختار الشيخان [10] ثمانين [11]، وحُكِمَ بخمس وسبعين. فإن [12] اختلف الشهود في سنه فالأقل ، وتجوز شهادتُهم على التقدير ، وحَلَفَ الوارثُ حينئذ . وإن تَنَصَّرَ أسيرٌ فعلى الطوع ، واعتدَّت في مفقود المُعتَرك بين المسلمين بعد انفصال الصَّفَّين. فهل [13] يُتَلَوَّمُ ويُجتَهَدُ ؟ تفسيران. وَوُرِثَ مالُه حينئذٍ كالمُنتَجِع لبلد الطاعون ، أو في زمنه. وفي الفَقد بين المسلمين والكفار بعد [14]

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(١) د : يعمر فيها .

(٢) القوانين : من .

(٣) ب وج : وقيل تسعون ومائة . القوانين : فالمشهور سبعون سنة وقيل ثمانون وتسعون ومائة .

(٤) بعدها : ليس بالقوانين .

(٥) القوانين : ولا يورث .

(٦) تلوم في الأمر : تمكث وانتظر . (المحقق) .

(٧) ج ود : حرب .

(٨) ابن جزى ، القوانين ، ٢١٢ .

(٩) كلمة (الحر) ساقطة من كل الأصول وأثبتناها من المختصر .

(١٠) الشيخان هما أبو محمد بن أبي زيد (القيرواني) وأبو الحسن القابسي . انظر الخرشي ، ٣ : ٢٩٣ .

(١١) ب وج ود : الثمانين . وما أثبتناه عن أ والمختصر .

(١٢) المختصر : وإن .

(١٣) المختصر : وهل .

(١٤) كل الأصول : (تعتد) سنة بعد النظر وهو تحريف والصحيح ما أثبتناه عن المختصر .

(٧٩ب) الفصل / الخمسون

في حكم أموال المفقودين وعدة[1] زوجاتهم وحكم غسل الشهداء وتكفينهم والصلاة عليهم

(فأقول وبالله التوفيق)[2] اما حكم أموال المفقودين وعدة زوجاتهم فقد قال ابن جزى فى القوانين : وهو أربعة أوجه ، مفقود فى بلاد المسلمين ، وفى بلاد العدو ، وفى قتال المسلمين فى بلاد العدو[3] ، وفى قتال[4] المسلمين فى الفتن .

فأما المفقود فى بلاد المسلمين فاذا رفعت زوجته أمرها إلى القاضى كلفها إثبات الزوجية وغيبته ، ثم بحث خبره[5] وكتب فى ذلك إلى البلاد ، فان وقف له على خبره[6] فليس بمفقود ويطالبه[7] بالرجوع أو الطلاق ، فان أقام على الإضرار طلق عليه ، وان لم يوقف على خبره[6] ولا عُرفت حياتُه من موته ، ضرب لها[8] أجل إبن أربعة أعوام للحر وعامين للعبد من يوم ترفع أمرَها . فاذا انقضى الأجل اعتدت (٨٠أ) عدة الوفاة ثم تزوجت إن شاءت. وقال أبو حنيفة والشافعى [9]:لا تحل إمرأة المفقود / حتى يصح موته . فروع أربعة : الأول إن كان قد دخل بها فنفقتها فى الأربعة أعوام عليه . وإن كان لم يدخل بها ، فان كان غيبته بعيدة لزمته النفقة يفرض لها فى ماله إن شاءت ذلك ، وان كانت غيبته قريبة فقولان . الثانى فان جاء[10] زوجـها فى الأجل أو فى العدة أو بعدها قبل أن تتزوج، فهى امرأته . وإن جاء بعد أن تزوج[11] فإن كان الثانى قد دخل بها فهى له دون الأول،وإن لم يدخل بها فقولان . الثالث[12] إن وقع الفراق من المفقودين قبل الدخول وجب لها نصف الصداق [13] . . . هذا حكمه فى زوجته، وأما ماله

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(١) أ و ب : وعدد .

(٢) يبدو هنا أنه سهى على المؤلف أن يورد عبارته : فأقول وبالله التوفيق التى يستهل بها مطلع كل فصل ، فلم نجدها فى كل الأصول الا فى ج ، حيث زاد الناسخ عبارة : وبالله التوفيق : فى الهامش . ويجوز أن يكون الناسخ نفسه قد افتقد العبارة فألحقها فى الهامش ناقصة ، وانظر كذلك مقدمة الفصل الثالث والثلاثين والفصل السابع والخمسين .

(٣) وفى قتال المسلمين فى بلاد العدو : العبارة ساقطة من د .

(٤) ج ود : وفى وقت قتال .

(٥) القوانين : عن خبره .

(٦) القوانين : خبر .

(٧) القوانين : ويكاتبه .

(٨) القوانين : له .

(٩) والشافعى : ليس بالقوانين .

(١٠) القوانين : الفرع الثانى إن جاء .

(١١) القوانين : تزوجت .

(١٢) القوانين : الفرع الثالث .

(١٣) من الملاحظ أن ابن جزى لم يورد الفرع الرابع .

معهم اختيارا ولم [١] يغيروا معهم ولم يعينوهم . وأما من سكن معهم اختيارا أو كان يغير معهم ويعينهم على الفساد ، فهذا منهم أى اقتلوه[٢] وانهبوا أمواله ولا تقبلوا له توبة اذا أمكنكم الله منهم[٣] . انتهى جوابه .

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(١) ج و د : أو لم .
(٢) أ و المنيل : فاقتلوه .
(٣) المنيل ، أجوبة أسكيا ، ٣٨ .

الفصل التاسع والاربعون

في حكم أموال المسلمين المقيمين مع المحاربين اختيارا

فأقول وبالله التوفيق : إن حكم أموالهم الإباحة وقد ذكر أبو القاسم البرزلي فى كتابه ما نصه : وقد ظفر السلطان بفرقة من بوادى افريقية وجلهم مستغرقو النعة [1] فأفتى شيخنا ابن عرفة بإباحة أموالهم عملا بالأغلب حتى يتحقق أهل الحلال منهم . قال : لأنهم عصاة بمكاثرة المحاربين وتكثير سوادهم فلم (٧٨ب) يجعل / لهم حرمة من بان بنفسه ولم يخالطهم [2] . انتهى .

قلت وهذه المسألة مما سأله الأمير الحاج أسكيا، محمد بن عبد الكريم المغيلي ونص سؤاله: جوابكم[3] فى المحاربين من فلان وغيرهم معهم أناس . . . يزعمون أنهم مسلمون ، وهم ساكنون معهم ملازمون لهم فى الرحيل والنزول ويخالطونهم فى كل شىء من أحوالهم وأمورهم ، وخيلهم مع خيلهم يغزون معهم ويحاربون معهم ، هذا غالب حالهم ومنهم من كان معهم ولا يحارب معهم إلا أنه مجاورهم . فلما غزونا أولئك المحاربين جمعهم جيشنا معهم وجاؤا بهم إلينا . فقالوا : نحن مسلمون . فقلنا لهم : كيف تجتمعون مع هؤلاء المحاربين ؟ فقالوا : ما نقدر على الخروج عنهم ، نخاف أن يأخذونا ، (٧٩أ) وإن خرجنا يأخذنا غيرهم ، لأنا مساكين لا نقدر الدفع عن أنفسنا . فقلنا لهم [4] : افترقوا / منهم . فهل نترك غزو المحاربين لئلا نضرّ أولئك المسلمين الذين معهم وأبوْا أن يفارقوهم ، أو لا بدّ من غزوهم وان كانت المضرة تلحق مَن معهم من المسلمين المذكورين ؟ فقد شوّشني فى ذلك بعض فقهاء بلدنا حتى توقفت عنهم [5] . انتهى نص السؤال .

أما نص جواب المغيلي فهو قوله : وأما المحاربون فلا بد من غزوهم ولا بأس عليكم فيمن أصيب بينهم من أولئك المسلمين ، لأنهم ظلموا أنفسهم بالنزول معهم . فما [6] لم تعلموا[7] به من أنفسهم وأموالهم حتى فسد[8] فلا شىء عليكم فيه . وما علمتم به قبل أن يفسد فاجتنبوه وردوه لأهله ، وذلك اذا لم يسكنوا

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(١) المغيلي : فمة .
(٢) جاء بهذا النص فى المغيلي ، أجوبة أسكيا ، ٣٩ .
(٣) د : ما جوابكم .
(٤) المغيلي : فرددنا إليهم أموالهم وقلنا لهم .
(٥) المغيلي ، أجوبة أسكيا ، ٣٦ .
(٦) المغيلي : وإن .
(٧) ج : يعلموا .
(٨) ج : فسدوا .

الامام . ثم قال ابن جزى فى أمر البغى : البغاة هم الذين يقاتلون على التأويل مثل الطوائف الضالة كالخوارج وغيرهم ، والذين يخرجون على الامام ، أويمتنعون (١) من الدخول فى طاعته ، أو يمنعون حقا وجب عليهم كالزكاة وشبهها فيُدْعون أولاً الى الرجوع إلى الحق(٢) ، فان فعلوا قُبِل منهم وكُفَّ عنهم ، وإن أَبَوْا قوتلوا وحلّ سفك دمائهم(٣) . وفى المعيار سئل أبو محمد عمن كان مع غيره فى حرابة فأخذوا شيئا بحضرته ولم يأكل ولم ينتفع بشىء منه ، فهل عليه شىء أم لا ؟ وكيف إن لم يكن بالغاً ؟ فأجاب : إن حضر مع لصوص فى سرقة أو سلب أو نحوه وهو بالغ فهو عند مالك كالحملاء يؤدى جميع ما حضر عند أخذه . وذهب بعض إلى أنه لا يلزمه إلّاما أخذ (٤). وغير البالغ لا يلزمه فى القولين إلّا ما أخذ (٥) . انتهى (٧٧ب) فان قلت : ما الذى / يجب للانسان من مال غيره اذا اضطر من جهة اللباس والطعام ، جوابه كما قال الداوودى: هو ما تجزء(٦) به الصلاة من اللباس وهو ما يستره من السرة إلى الركبة ، وقوت يومه . وفارق المفلس لأنه لم يصل اليه أموال الناس بالفداء ، فلذا يترك له لباس مثله وما يعيش به أياما . قال الخرشى فى شرح المختصرعند قول المصنف : وتُرِك له قُوتُه والنَّفقةُ الواجبةُ لِظَنّ يُسْرته وكِسْوتُهم كُل دَسْتاً (٧) : والمعنى أن الحاكم يبيع على المفلس ماله ويقسمه بين غرمائه . . . ويترك له منه قوته(٨) وقوت من تلزمه نفقته شرعا من زوجاته وولده ورقيقه وأمهات أولاده ومدبره إلى ميسرته . . . بخلاف مستغرق الذمة (٩) بالظلم والتبعات إذا أفلس فانه لا يترك له الا ما يسد به جوعته(١٠). انتهى . وفى المعيار أيضا سئل ابن أبى زيد عمن كان فى جيش لبعض الظلمة وربما غصب قوم فحصل له شىء يسير (٧٨أ) / فهل يلزمه ما أخذ خاصة أو يلزمه ما أخذ الجيش ؟ فأجاب : إن كان رئيس الجيش — ولولاه لم يكن ما كان — فعليه غرم الجميع ، وإن كان لا رأى له فى الجيش ولا وجه فعليه غرم ما أخذ خاصة . قيل وهذا بخلاف المحاربين ، فان بعضهم يحمل عن بعض بما لا وجه له فيه وكل واحد مأخوذ بالجميع لأن الجيش فيه الحق والباطل ، والمحاربون(١١) على باطل . انتهى .

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(١) كل الأصول : أو يمنعون . وما أثبتناه عن القوانين .
(٢) القوانين : فيدعون إلى الرجوع للحق .
(٣) ابن جزى ، القوانين ، ٣٤٨ .
(٤) ج ود : أخذه .
(٥) ج : أخذه .
(٦) هكذا فى كل الأصول ولربما يكون تحريفاً لـ (تجوز) . إلا أن جزأ وتجزأ بالشىء يعنى قنع واكتفى به . (انظر لسان العرب) لذا : تجزء به الصلاة ، يعنى : تجوز به الصلاة .
(٧) المختصر : النفقة الواجبة عليه ، ٢٢٧ .
(٨) الخرشى : قوت نفسه .
(٩) مستغرق الذمة هو من شغلت حقوق الناس ذمته حتى لم يبق له شىء . والذمة هى الطاقة على الضمان وإيفاء حقوق الآخرين .
(١٠) الخرشى ، ٤ : ١٨٥ .
(١١) أ : والمحاربون جميعهم .

الفصل الثامن والاربعون

(٧٦أ) في الفرق بين قتال المحاربين وبين قتال / البغاة

فأقول وبالله التوفيق : قال ابن الحاج في المدخل : وقتال المحاربين كقتال الفئة الباغية في جميع أحوالهم إلا في خمسة أشياء يخالفونهم فيها . أحدها أنهم يقاتلون مقبلين ومدبرين . الثاني يجوز أن يُتعمّد في الحرب قتلهم . الثالث أنه يجوز حبس أسراهم . . . الرابع أنهم ضامنون لما استهلكوه من دم أو مال في الحرب وغيرها[١] ولا يجوز ذلك في الفئة الباغية بعد انجلاء الحرب . الخامس أن ما أخذوه من خراج وصدقات فهو كالمأخوذ غصبا ، على[٢] من أخذ من يده ، غرمه[٣] . وقال ابن جزي في القوانين : ويجب أن يوعظوا ، يعني المحاربين ، أولا ويقسم عليهم بالله[٤] . . . ثلاثا ، فان رجعوا وإلا قوتلوا وقتالهم جهاد . ومن قتل من المحاربين فدمه هدر ومن قتلوه فهو شهيد . واذا أُخذ المحارب قبل توبته أُقيم عليه الحد وهو القتل أو الصلب[٥] أو قطع اليد والرجل أو النفي . وأما القتل والصلب فيجمع بينهما ويقدم (٧٦ب) / الصلب عند ابن القاسم ويؤخر عند أشهب . وأما القطع فتقطع[٦] يده اليمنى ورجله اليسرى. وأما النفي فللحر دون العبد ينفى الى بلد آخر ويسجن فيه. وقال أبو حنيفة : يسجن في بلده حتى يظهر توبته . وإن قتل المحارب فلا بد من قتله سواء كان حرا أو عبدا أو ذميا ، ولا يجوز عفو ولي المقتول عنه ، وإن لم يقتل فالامام مخير بين القتل أو النفي أو القطع[٧] ، يفعل من ذلك ما يراه نظرا ولا يحكم فيه بالهوى . وقال الشافعي لا يخيّر ، بل هذه العقوبات مرتبة على الجنايات ، فان قَتل قُتل ، وإن أخذ المال قُطع ، وإن لم يقتل ولم يأخذ مالاً[٨] نُفي. ثم قال ابن جزي في القوانين: واذا تاب المحارب قبل أن يقدر عليه سقط عنه[٩] الحد ووجب عليه حقوق الناس من القصاص ، وغرم ما أخذ[١٠] من الأموال.وحكمه في الغرم حكم السارق في عسره ويسره . وقيل يسقط عنه الحد والقصاص ويطالب بالأموال ، وقيل يسقط (٧٧أ) عنه الحد والقصاص / والأموال إلا ان يكون شيء منها قائما في يده فيؤخذ منه . واختلف في صفة توبته فقيل أن يترك ما كان عليه من الحرابة وقيل يأتي الإمام، وقيل[١١] أن يترك ما كان عليه ويأتي

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(١) كل الأصول : وغيره .

(٢) المدخل : فمل من أخذه غرمه .

(٣) ابن الحاج ، المدخل ، ٣ : ٤

(٤) القوانين : بالله عليهم .

(٥) ج : والصلب .

(٦) كل الأصول : فيقطع . وما أثبتناه من القوانين .

(٧) أ و ب : بين القتل أو النفي . ج و د : بين القتل والنفي والقطع . وما أثبتناه عن القوانين .

(٨) القوانين : المال .

(٩) ج و د : عليه .

(١٠) القوانين : والغرم وأخذ الأموال .

(١١) أ و د : فقيل .

الفصل السادس والاربعون

فى الفرق بين قتال الكافرين[1] بالأصالة وبين قتال المرتدين

فأقول وبالله التوفيق : قال محمد بن عبد الكريم المغيل فى أجوبة أسئلة أسكيا ، الكفار على ثلاثة أصناف الأول : من هو كافر صريح بالأصالة بالنصوص [2] كاليهود ، والنصارى ، والمجوس ونحوهم ممن ورث الكفر الصريح عن[3] آبائه [4] . الثانى : من كان مسلما ثم ارتد عن دين الاسلام ارتدادا ظاهرا فصرح أنه خرج عن دين الاسلام ودخل فى غيره من دين الكفر . الثالث : من يزعم أنه مسلم وحكمنا بكفره لأجل أنه صدر منه ما لا يقع فى الظاهر الا من كافر . . . فالكفار[5] بأصالة الكفر تسبى ذراريهم ونساؤهم ، وتقسم أموالهم ولا خلاف فى ذلك بين العلماء . وفى الكفار بالارتداد خلاف . قال ابن القاسم (٧٤أ) فى أهل حصن من المسلمين ارتدوا عن دين / الاسلام الى الكفر : لا تسبى ذراريهم ونساؤهم ، وأموالهم فىء[6] للمسلمين . وقال ابن رشد : وهذا هو الصحيح من جهة النظر لأن المرتدين أحرار من أصلهم . قال : والى مذهب ابن القاسم فى المرتدين ذهب عامة العلماء وأئمة السلف . ثم قال فى الصنف الثالث : لا تسترق أولادهم إنما يجبرون على الاسلام[7] . وفى المختصر : وإن ارتد جماعة وحاربوا فكالمرتدين[8] . قال الشبرخيتى فى هذا المحل فى بيان معنى ذلك : يستتاب الكبير ، ويجبر الصغير ويوقف المال ولا تسبى العيال[9] ، وهو فعل عمر رضى الله عنه ، وعليه جماعة العلماء وأئمة السلف إلا قليلا . وقال أصبغ : كالكفار الحربيين يسترقون هم وأولادهم وعيالهم ، ولعمرى انه أمر خالف فيه عمر أبا بكر فى أهل الردة من العرب فجعلهم أبو بكر الناقضين للعهد ، فقتل الكبار [10] وسبى النساء والصغار وجرت فيهم (٧٤ب) المقاسم وفى أموالهم ، وهو فعل أبى بكر الصديق رضى الله عنه . قال المصنف / : والظاهر أن عمر لم يخالف أبا بكر ، بل فعله تطيباً لنفوس المسلمين . لأن الواحد يرى بنته وزوجته ومملوكه (عند غيره)[11] مع مساواته له فى النسب والشرف، وفيه من المشقة وتغيير النفوس ما هو معلوم . وقيل بل

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(١) ج ود : الكفار .
(٢) بالنصوص : ليس بالمغيل .
(٣) المغيل : من .
(٤) ج ود : آبائهم .
(٥) المغيل : فالكافر .
(٦) المغيل : فهى فى .
(٧) المغيل ، أجوبة أسكيا ، ٢٠ .
(٨) المختصر ، ١١٩ .
(٩) الشبرخيتى : ولا يسبى .
(١٠) فقتل الكبار : العبارة ساقطة من ج .
(١١) الزيادة من نص الشبرخيتى وقد سقطت من كل الأصول .

لضعفه . وقال الشافعي : الجزية دينار على رأس وان صالحوا(١) على أكثر من ذلك جاز . وقال أبو حنيفة وابن حنبل اثنا عشر درهما على الفقير واربعة وعشرون درهما على الوسط(٢) وثمانيةٌ وأربعون درهما (٧٢ب) / على الغني واذا أسلم الذمي سقط(٣) عنه الجزية ولو لم يبق من عامه إلا يوم واحد . والثاني ضيافة المسلمين ثلاثة أيام إذا مرُّوا عليهم . والثالثُ عُشْرُ ما يتجرون به في غير بلادهم التي يسكنونها ، وذلك بعد أداء الجزية . والجزية ثلاثة أنواع : جزية عشرية وهي هذه ، وجزية عَنوية وهي المذكورة قبل هذه ، وجزية صُلحية فلا حد لها ولا بمن(٤) تؤخذ إلا ما يقع الصلح عليه . والرابع ألا يبنوا كنيسة ولا يتركوها(٥) مبنية في بلدة بناها المسلمون إن فُتحت عَنوة ، وإن فُتحت صلحا واشترطوا بقاءها(٦) ، جاز . وفي اشتراط بنائها قولان . الخامس ألا يركبوا الخيل والبغال النفيسة بخلاف الحمير . السادس أن يُمنعوا من جادة الطرق ويُضطروا الى أضيقها . السابع أنْ يلزموا(٧) علامة يعرفون بها كالزنار (٧٣أ) / ويعاقبون على تركها . الثامن ألا يغشوا المسلمين ولا يأووا جاسوسا . التاسع ألاّ يمنعوا المسلمين من النزول في كنائسهم ليلا ونهارا . العاشر أن يوقروا المسلمين فلا يضربون مسلما ولا يسبونه ولا يستخدمونه . والحادي عشر أن يخفوا نواقيسهم ولا يظهروا شيئا من شعائر(٨) دينهم . الثاني عشر ألاّ يسبوا احدا من الأنبياء عليهم الصلاة والسلام ولا يظهروا معتقدهم . ثم قال في بيان الأمور التي تجب لهم علينا : وهي التزام إقرارهم في بلادنا إلاّ جزيرة العرب : الحجاز واليمن ، وأن نكف عنهم(٩) ونعصمهم بأمان في أنفسهم وأموالهم ولا يتعرض لكنائسهم ولا لخمورهم ولا خنازيرهم مالم يظهروها ، فان أظهروا الخمر أرقناها(١٠) عليهم وإن لم يظهروها ، فأراقها مسلم ضمنها ، وقيل لايضمن. ويؤدب من أظهر منهم الخنزير واذا خرجوا(١١) من غير عنف ولا ظلم استرقوا فان خرجوا بظلم وعنف(١٢) لم يسترقوا ، (٧٣ب) وقال أشهب لا يسترقون أصلا (١٣) . انتهى . /

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(١) القوانين : وإن صولحوا .
(٢) القوانين : المتوسط .
(٣) القوانين : سقطت .
(٤) القوانين : لمن .
(٥) ب وج والقوانين : ولا يتركونها .
(٦) القوانين : أو اشترطوها .
(٧) القوانين : أن تكون لهم .
(٨) القوانين : شعار .
(٩) القوانين : يكف عنهم .
(١٠) كل الأصول : أرقناه . وما أثبتناه من القوانين .
(١١) القوانين : اخرجوا .
(١٢) القوانين : أو عنف .
(١٣) ابن جزي ، القوانين ، ١٦٥ .

الفصل الخامس والاربعون

فى أحكام أهل الذمة من[1] أخذ الجزية وغيره

(٧١ب) فأقول وبالله التوفيق : قال فى (٥) المختصر فى بيان عقد / الجزية : عقد الجزية إذْنُ الامام لكافرٍ صحَّ سباؤه ، مُكلَّفٍ حرٍّ قادرٍ مُخالط ، لم يَعْتِقْهُ مُسْلِمٌ ، سُكْنَى غيرِ مكةَ والمدينة واليمن ولهُمْ الاجتيازُ (٢)، بمالٍ ، للعَنوىِّ(٣) : أربعةُ دنانيرَ أوْ أربعونَ (٤) درهماً فى سنة ،والظاهرُ آخرُها ، ونُقِّصَ الفقيرُ بوُسْعِه ، ولا يزاد للملى(٥). وللصُّلْحِىِّ مَا شُرِطَ، وإنْ أُطْلِقَ فكالأوَّل ، والظاهرُ إنْ بَذَلَ الأوَّلَ حَرُمَ قتالُه مع الإهانة عند أخْذِها . وسَقَطَتَا(٦) بالاسلام كأرْزَاقِ المسلمينَ ، وإضَافَةِ المُجتازِ ثلاثاً للظلْمِ . والعَنوىُّ حرٌّ . وإنْ ماتَ أوْ أسْلم فالأرضُ فقطْ للمسلمينَ ؛ وفى الصلْحِ إنْ أُجْمِلَتْ فلَهُمْ أرضُهم والوصيّةُ بمالهم ، ووَرِثُوها . وإنْ فُرِّقَتْ على الرِّقاب فهى لهم ، إلا أنْ يَمُوتَ بلا وارث ، فللْمسلمين. ووصيتُهم فى الثُّلُث ، وإنْ فُرِّقَتْ عليها أو عليهما فلهم بيْعُها ، وخرَاجُها على البائع . ثم قال بعد كلام : ومُنِعَ رُكُوبَ الخيلِ ، والبغال (٧٢أ) والسرُوجِ ، وجادَّةَ الطريق ، وأُلْزِمَ بِلُبْسٍ يُميّزُ به (٧) ، وعُزِّرَ لتَرْكِ (٨) الزُّنَّارِ ، / وظهورِ السكرِ ومُعْتَقَدِهِ ، وبَسْطِ لسانِه . وأُرِيقَتْ الخمرُ . وكُسِرَ النَاقُوسُ . ويَنْتقِضُ بقتالٍ ، ومَنْعِ جزيَةٍ ،وتَمَرُّدٍ على الأحكامِ ، وغَصْبِ(٩) حُرَّةٍ مسلمة، وغُرُورِها ، وتَطَلُّعٍ(١٠) على عَوْرَاتِ المسلمينَ، وسَبِّ نبىٍّ بما لم يَكْفُرْ به . . . وقُتِلَ إنْ لمْ يُسْلِمْ وإنْ خَرَجَ لِدَارِ الحرب وأُخِذَ استُرِقَّ إنْ لمْ يُظْلَمْ ،وإلاَّ فَلاَ (١١). وقال ابن جزى فى القوانين فى بيان الأمور التى تجب لنا عليهم وهى اثنا عشر شيئاً الأول : أداء الجزية عن يد وهم صاغرون ، وهى أربعة دنانير فى العام على كل رأس من أهل الذهب ، وأربعون درهما على أهل الفضة . ولا يُزاد على ذلك لقوة أحد ولا ينقص

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(١) . . . . ساقطة من أ .

(٢) ج و د : اجتياز .

(٣) العنوى هو الكافر الذى فتح المسلمون بلده بالقتال ، تفرض عليه الجزية . أربعة دنانير من الذهب إن كان من أصحاب الذهب ، أو أربعون درهما من الفضة إن كان من أهل الفضة فى كل سنة قمرية .

(٤) فى كل الأصول : وأربعون . والصحيح ما أثبتناه من المختصر .

(٥) ب : على الغنى . والمختصر : ونقص الفقير بوسعه ؛ ولا يزاد.

(٦) أى الجزيتان ، العنوية والصلحية .

(٧) المختصر : يميز .

(٨) كل الأصول : بترك وما أثبتناه من المختصر .

(٩) المختصر : وبغصب .

(١٠) المختصر : وتطلعه .

(١١) المختصر ، ١١٧ .

الفصل الرابع والاربعون

فى الصلح مع الحربيين على المهادنة

(٧١ أ) فأقول وبالله التوفيق : قال ابن جزى فى القوانين : شروط جوازه أربعة (١) : الأول الحاجة / اليه فان كان لغيره مصلحة لم يجز ، ولو بذل العدو المال . وإن كان لمصلحة كالعجز عن القتال مطلقا أو فى وقت خاص ، فيجوز بعوض أو بغير (٢) عوض على ما يكون سداداً للمسلمين . والثانى ألا يتولاه إلا الامام (٣) . والثالث خلوه عن شرط فاسد (٤) كترك مسلم فى أيديهم أو بذل مال لهم من غير خوف ، ويجوز مع الخوف . والرابع أن لا يزاد (٥) على المدة التى تدعو اليها الحاجة على حسب الاجتهاد . وقال ابو عمران : يستحب أن لا تزيد على أربعة أشهر الا مع العجز (٦) . وفى المختصر : وللامام المُهادَنَةُ لمصلحة ، إنْ خلاَ عَنْ كَشَرْطِ بَقَاءِ مسلم وإنْ بِمَالٍ ، إلاَّ لِخَوْفٍ ، وَ لاحَدَّ وَنُدِبَ ألا تَزِيدَ على أربعَةِ أشْهرٍ ، وانِ استَشْعَرَ خِيَانَتَهُمْ نَبَذَهُ وَأنْذَرَهُمْ (٧) . انتهى .

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(١) القوانين : وهى أربعة .
(٢) القوانين : وبغير .
(٣) د : أن يتولاه الإمام .
(٤) القوانين : فائدة .
(٥) أ : أن لايزداد . القوانين : لا يزيد .
(٦) ابن جزى ، القوانين ، ١٥٤ .
(٧) المختصر ، ١١٩ .

الفصل الثالث والاربعون

فى الامان

فأقول وبالله التوفيق : قال ابن جزى فى القوانين : وهو على ثلاثة أضرب ، إثنان على العموم وينفرد بعقدهما السلطان وهما أمان الصلح والذمة (١) وسيأتيان . والثالث خاص بكافر واحد أو بعدد(٢) محصور ، ويصح من كل مسلم مميز ، فيدخل فى ذلك المرأة عند الأربعة ، والعبد عند الثلاثة (٣) والصبى الذى يعقل(٤) الأمان ، فى المذهب . فيلزم الامام وغيره الوفاء به إذا لم يكن فيه مضرة سواء كان فيه منفعة أم لا . وسواء كان بكلام أو كتابة بأى لغة ، أو كتابة أو إشارة مفهمة ، ولو ظن الكافر أن المسلم أراد الأمان والمسلم لم يرده فلا يقتل(٥) . واذا شرط الأمان فى أهله وماله لزم الوفاء به ، ومن دخل على السفارة أو التجارة(٦) (٧٠ب) لم يفتقر / الى أمان ، ذلك القصد يؤمنه . ثم قال بعد كلام : واذا دخل الحربى إلينا بأمان وترك عندنا مالا فهو له أو لورثته بعده . وإذا أخذ علج فى طريق فادعى شيئا (٧) يحقن به دمه ولم يتبين صدقه من كذبه ، وجب رده الى مأمنه إن لم يقبل قوله(٨) . وفى المختصر : وسَقط القتلُ ولو بعد الفتح بلفظ ، أو إشارَة مُفْهِمة ، إنْ لم يَضُرَّ ، وإنْ ظَنَّهُ حَرْبِى فَجَاء ، أَوْ نَهَى الناسَ عنه فَعَصَوْا ، أو نَسُوا أوْ جَهِلُوا ، أَوْ جَهِلَ إسْلاَمَهُ لاَ إمْضَاءه أمْضِيَ أَوْ رُدَّ لِمَحَلِّهِ . وإنْ أُخِذَ مُقْبِلاً بأرْضِهِمْ ، وقال : جِئْتُ أطْلُبُ الأمَانَ ، أوْ بأرْضِنَا وقال : ظننتُ أنكم لا تَعْرِضُونَ لِتَاجِرٍ ، أَوْ بينهما ، رُدَّ لمأمَنِهِ . وإنْ قامَتْ قَرِينَةٌ ، فعليْها ، وإنْ بِرِيحٍ ، فَعَلَى أمانه حتى يَصِلَ(٩) .
انتهـى .

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(١) القوانين : وهما الصلح والذمة .
(٢) كل الأصول : وبعدد . وما أثبتناه من القوانين .
(٣) الثلاثة هم الأئمة : مالك والشافعى وأبو حنيفة ، انظر ابن جزى ، القوانين ، ٩١ .
(٤) القوانين . لا يعقل .
(٥) أ و ب : فلا يقتال .
(٦) القوانين : ومن دخل المقال لم يفتقر . . .
(٧) القوانين : سببا .
(٨) ابن جزى ، القوانين ، ١٥٤ .
(٩) المختصر : ١١٤

(١٧٠أ) والأخوات وبنيهن(١) . انتهى . وفي المختصر : وَرَجَعَ بِمِثْلِ / المِثْلِيِّ وَقِيمَةِ غَيْرِهِ عَلَى المَلِيّ والمُعْدِمِ(٢) ، إن لَمْ يَقْصِدْ صَدَقَةً ولم يُمْكِنِ الخَلَاصُ بِدُونِهِ ، إلاَّ مَحْرَماً أَوْ زَوْجاً إنْ عَرَفَهُ أوْ عَتَقَ عَلَيْهِ ، إلاَّ أَنْ يَأْمُرَهُ بِهِ وَيَلْتَزِمه(٣) . انتهى .

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(١) ابن جزى ، القوانين ، ١٥٢ .

(٢) ج ود : وعلى المعدم .

(٣) المختصر ، ١١٩ .

الفصل الثاني والأربعون

في حكم فداء أسارى المسلمين والرجوع بالفدية

فأقول وبالله التوفيق : إن فداء أسارى المسلمين واجب : قال ابن جزى فى القوانين : يجب استنقاذهم من الكفار[1] بالقتال فان عجز المسلمون عنه وجب عليهم الفداء بالمال ، فيجب على الأسير الغنى فداء نفسه ، وعلى الامام فداء الفقراء[2] من بيت المال ، فما نقص عنه ففى[3] جميع المسلمين . . . ويجبر الامام سادات العلوج على فداء المسلمين بهم ويعطيهم الثمن[4] . وفى المختصر : وَفُدِيَ بالفيء ، ثم بمال المسلمين ، ثم بماله[5] . قال الخرشى فى هذا المحل : المعنى أن الأسير المسلم . . . يجب فداؤه ، ويُبدأ فى فدائه بالفيء وهو بيت المال على طريق ابن بشير وابن رشد . ثم إن عجز بيت المال أو لم يوصل اليه ، أو كان ، وقصر عن الفداء ، فدى بمال المسلمين أو عما[6] قصر عنه بيت المال على قدر أموالهم ولو (٦٩ب) / استغرقتها ، مالم يخش استيلاء العدو[7] ، ولذلك قال ابن عرفة : والأسير كأحدهم إن كان له مال ثم إن منع[8] المسلمون ذلك ، وزاد الشبرخيتى : أو لم يقدروا[9] ، فدى بماله إن كان له مال : وإنما قدم مال المسلمين على ماله لأن المصلحة فى تعلق الفداء بمال المسلمين أشد منها فى تعلقه بماله ، لأن ذلك يحملهم على قتال الكفار ، مع أن تيسره من مال المسلمين أشد من تيسره من ماله[10] . وقال عبد الباقى : وليس للامام ان يلزم واحدا[11] من المسلمين بذلك ، وإنما عليهم بمقدار يسرهم[12] .

وأما الرجوع بالفدية ، فقد قال ابن جزى فى القوانين : ومن فدى أسيرا بأمره رجع عليه بالفدية اتفاقا . فان فداه بغير أمره ولا علمه رجع أيضا عليه ، خلافا للشافعى . وقيل يرجع عليه إن كان موسرا وعلى بيت المال إن كان معسرا ، والفدية مقدمة على الدين. واذا فدى أحد الزوجين صاحبه فلا رجوع له الا أن يفديه بأمره. وكذلك الأقارب من الآباء والأمهات والأولاد والأجداد والأعمام والأخوال والإخوة وبنيهم

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(١) القوانين : من يد الكفار .
(٢) أ . الفقير .
(٣) القوانين : فما نقص تعين فى .
(٤) على فداء المسلمين ويعطاهم الثمن : أبن جزى ، القوانين ، ١٥٢ .
(٥) المختصر ، ١١٩ .
(٦) كل الأصول : ما . وما أثبتناه عن الخرشى .
(٧) كل الأصول : الفداء . وما أثبتناه عن الخرشى .
(٨) كل الأصول : ضيع . وما أثبتناه عن الخرشى .
(٩) الشبرخيتى ، ٢ : ورقة ٨٨ ظهر .
(١٠) الخرشى ، ٢ : ٤٥٠ .
(١١) عبد الباقى : أحدا .
(١٢) عبد الباقى ، ٣ : ١٩٠ .

الفصــل الحادي والاربعون

فى حكم أموال المسلمين المقيمين ببلد الحرب

فأقول وبالله التوفيق : قد سئل الأجهورى كمـا فى الزهرات الوردية عن جماعة من المسلمين عند ملك كافر . . . ثم إن سلطان المسلمين غزاهم وأخذ منهم غنائم ثم جاؤا فعرفوا أموالهم . فهل لهم أخذها أم لا ؟ فأجاب بقوله : إنّ مال المسلمين المقيمين ببلد الحرب . . . فيء ؛ فيكون من جملـة مال بيت (٦٨ب) المال ./ قاله البرزلى عن بعضهم . ثم قال : وأخبرت أن أصبغ قال بذلك لأنه لا يد عليه لصاحبه وانما اليد عليه للكفار . وبذلك قال ابن رشد[١] . انتهى . ثم قال : وعليه فليس لمن وجد شيئا منهم من ماله أخذه بحال[٢] . وفى المعيار أن أصبغ من أصحابنا ، كان يفتى بجلية[٣] ذلك المال لأنه لا يد لصاحبه عليه وانما اليد على الكفار ، ومثله قول ابن رشد . ثم قال : قال البرزلى وقد يستدل عليها بأموال الصحابة التى تركوها بمكة لقوله عليه السلام : وهل ترك لنا عقيل من دار ، الى غير ذلك ، بل يكون أحرى هنا لكونه رضى بالإقامة بين المشركين فهو وماله تحت إيالتهم مع الإجماع على وجوب الهجرة . انتهى . وفى المعيار ايضا فى محل آخر أن قول أشهب وسحنون : إن هذا المال لا يجوز ، لعموم قوله عليه السلام : لا يحل مال امرىء مسلم الا عن طيب نفس منه .

وفيه أيضا فى محل آخر : وللمتأخرين خلاف فى استباحة أموالهم على أن حكمها حكم الدار واحترامها بحرمة الاسلام ، والأول[٤] هو الصحيح . وفى الجامع شرح المختصر عند قول المصنف : وولد الحربى (٦٩أ) وماله / فيء مطلقا : المسلم اذا خرج[٥] الى دار الحرب وأقام بها هل يكون ماله فيئا لهذا نظراً الى الموضع الذى هو فيه أو لا نظرا الى أنه مال مسلم ؟ لأن الأصل المنع . خرّجوا هذه المسألة على[٦] هذه المسألة . انتهى .

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(١) عبد المالك ، الزهرات الوردية ، ورقة ٢٣٣ وجه .
(٢) المصدر السابق .
(٣) ج : بحلية .
(٤) الأول : ليس فى ج .
(٥) ج : أخرج .
(٦) ج : من . د : عن .

الفصل الاربعـون

في حكم ولد الحربي وماله اذا أسلم ببلد الحرب واستمر فيها

أو خرج الينا وترك ولده وماله هناك

فأقول وبالله التوفيق : قال فى المختصر : وَوَلَدُهُ وَمَالُهُ فَيْءٌ مطلقا[1] . قال الخرشى فى هذا المحل : الضمير فى ولده راجع لمن أسلم ، المفهوم من قوله بعده . والمعنى أن الحربى اذا أسلم وفر إلينا أو بقى فى بلاده حتى غنمنا بلاده فان ولده . . . وماله غنيمة للجيش الذى دخل بلاده ، وهو مراده بالفىء . ولو عبر به لكان أحسن . وأما زوجته فهى غنيمة اتفاقا ، وكذا مهرها . . . ولا فرق فى ولده بين الصغير والكبير بقى الحربى ببلده ، أو خرج الينا وترك ماله وولده ، أسلم عندنا فى أمانة أو (فى) [2] بلادة وهو معنى الاطلاق[3] . وقال عبد الباقى عند قول المصنف وولده وماله فىء مطلقا : أى الحربى الذى أسلم . . . ثم غزا المسلمون بلده فغنموا ولده ، وكانت أمه حملت به قبل إسلام أبيه بدليل قوله فيما سبق : (٦٨ أ) وَرَق إنْ حَمَلَتْ به / بِكُفْرٍ [4] . وأما إن حملت به بعد إسلام أبيه فحر اتفاقا كما فى تت [5] : وقال عند قوله فىء : غنيمة للجيش الذى دخل بلاده . وقال عند قوله : مطلقا كان الولد صغيرا أو كبيرا ، جاء [6] الحربى الينا وترك ولده أو لم يجىء [7] . وفى الجامع شرح المختصر عند قول المصنف : مطلقا : أى كان الأولاد صغارا أو كبارا [8] خرج الينا بعد الاسلام أو بقى فى دار الحرب ، أدرك ذلك قبل القسم أو بعده لا فرق . ثم قال : خلافا لمن قال إنما يكون فيئا اذا خرج الينا . واما إن لم يخرج الينا فلا يكون فيئا بل يكون [9] له ، لأن ماله فى يده لم يحزه غيره . وهما تأويلان على المدونة . انتهى . وقال ابن جزى فى القوانين : واذا أسلم الحربى ثم غزا المسلمون بلاده فزوجته فىء وكذلك أولاده على المشهور [10] . انتهى .

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(١) المختصر ، ١١٧ .

(٢) فى : ساقطة من كل الأصول وأثبتناها من الخرشى .

(٣) الخرشى ، ٣ : ١٤٠ .

(٤) المختصر ، ١١٣ . ويعنى أنه لا يمنع استرقاق الكافرة حملها بجنين مسلم . ويكون الجنين نفسه رقيقا إن حملت به أمه من زوجها الكافر ولو أسلم زوجها بعد ذلك .

(٥) انظر صفحة ٥٤ حاشية ٩ أعلاه . ولا توجد عبارة (كما فى تت) فى شرح عبد الباقى .

(٦) د تزيد : بعد الاسلام .

(٧) عبد الباقى ، ٣ : ١٧٧ .

(٨) ج : كان الولد صغيرا أو كبيرا .

(٩) أ و ب : كان .

(١٠) ابن جزى ، القوانين ، ١٥١ .

فان قلت: هل ثبت عن النبى صلى الله عليه وسلم وأصحابه أنهم كانوا يبحثون ويتوقفون فى ملكهم أم يملكون ولا يبالون ؟ قلت: جوابه كما فى الكتاب المذكور أن حال الناس فى زمنه صلى الله عليه وسلم وأصحابه رضوان الله عليهم ؛ معلوم لغلبة الكفر حينئذ على الناس ، فما يملك حينئذ من الرقيق حاله معلوم لكونه من الكفار ، ولأن من أسلم حينئذ معلوم . (تنبيه) وفى المعيار : ومن باع حرا ألزم أن يطلبه حتى (٦٧ب) يرده وغرم الثمن لمن اشترى ، إن لم يعلم أنه حر ، وعوقب على قدر الاجتهاد . وإن علم / المشترى أنه حر قبل يرد له ، وقيل لا يرد بل تصدق بالثمن تأديبا له . وإن طلبه البائع ولم يجده حتى طال الزمان فى ذلك ، أغرم ديته كاملة . كذا أفتى محمد بن بشير قاضى قرطبة ، يريد تكون الدية لورثته كما لو قتله(١) . انتهى .

(١) أحمد باب ، الكشف والبيان ، الورقة الثالثة ، وجه .

الفصل التاسع والثلاثون

فى حكم من وجد فى أيدى[1] الكفار مستعبداً وادعي أنه حر مسلم لم يهاجر وحكم من جلب من بلد كثر فيه بيع الاحرار وادعى أنه حر مسلم

فأقول وبالله التوفيق : قال محمد بن عبد الكريم المغيلي فى أجوبة أسئلة الأمير الحاج أسكيا : وأما من وجدتموه بأيديهم مستعبدا وزعم[2] أنه حر مسلم [3] فالقول قوله ، حتى تقوم البينة انه رق[4] . ثم قال له : وكل من تركته منهم لزعمه أنه حر مسلم ثم تَبَيَّنَ لك أنه كان كافرا فاردده للرق [5] . انتهى .

وأما من جلب من بلد كثر فيه بيع الأحرار وادعى أنه حر مسلم ، فقد سئل ابن زرب كما فى المعيار عن عبد بيد رجل زعم أنه حر مسلم ، وعلم أنه بيع فى بلدة بيع الاحرار فيها فاش معلوم فأجاب : يخرج المملوك عن يد الذى هو بيده حتى يقيم البينة أنه ابتاعه ممن كان له مالكا . انتهى . وفى نوازل أبى الأصبغ بن سهل الامام المشهور : من ادعى الحرية وذكر أنه من بلد كثر فيه بيع الأحرار ووافقه المشترى (٦٧ أ) على أنه اشتراه من ذلك البلد ، قال محمد بن الوليد ويحيى بن عبد العزيز : / يكلف المشترى إثبات رقه . وقاله [6] سحنون[7] . وقال الشيخ أحمد باب فى كتاب الكشف والبيان لأصناف مجلوب السودان : وقد كان الفقيه محمود بن عمر بن محمد أقيت يحكم فى وقته لمن يدعى الحرية منهم[8] وينزعه ممن فى يده حتى يثبت الملكية ، والا حكم بحريته منه (٥). وبه أيضا أفتى الفقيه الحافظ المخلوف البلبالى. ثم قال : قال ابن لبابة : البينة على مدعى الحرية[9] . انتهى .

قلت وحالات أهل هذه البلاد السودانية كما فى الكتاب المذكور متقاربة ولا يفرق بعضهم من بعض الا هذا مسلم أصلى وهذا كافر أصلى ومن هنا يلتبس الحال على من جلبوا اليهم ، فلا يعرفون حقيقة المجلوب[10] . انتهى .

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(١) ب وج ود : أيد .
(٢) د . وادعى .
(٣) مسلم : ليس بالمغيل .
(٤) المغيل ، أجوبة اسكيا ، ٢١ .
(٥) المغيل ، أجوبة اسكيا ، ٢٥ .
(٦) د : وقال .
(٧) انظر أحمد باب ، الورقة الثانية ظهر .
(٨) .... (٥) ساقطة من ب ر ج و د وما اثبتناه عن أ وكتاب الكشف والبيان .
(٩) أحمد باب ، الورقة الثانية ، ظهر .
(١٠) أحمد باب ، الورقة الأولى ، ظهر .

وطؤهن بعد الاستبراء، لأن السبى يرتفع به النكاح بينها وبين زوجها . قال أبو سعيد الخدرى: بعث رسول الله صلى الله عليه وسلم جيشا إلى أوطاس فأصابوا سبايا لهن أزواج من المشركين فكرهوا غشيانهن فأنزل الله هذه الآية(١) وقال الخرشى فى شرح المختصر عند قول المصنف وهدم السبى النكاح : يعنى أن الزوجين الكافرين اذا سبيا مجتمعين أو أحدهما قبل الآخر ، فان النكاح بفسخ(٢) بينهما ويحل وطؤها بعد الاستبراء بحيضة ،ولا علة لأنها صارت أمة (٣) . وفى الرسالة : واستبراء الأمة فى انتقال الملك حيضة ، انتقل الملك ببيع أو هبة أو بسبي(٤) أو غير ذلك (٥) . وفى تحقيق المبانى: الاستبراء شرعا الكشف عن حال الأرحام عند انتقال الأملاك ، مراعاة لحفظ الأنساب . وهو واجب كايجاب العدة فى الزوجات لقوله / (٦٦ب) صلى الله عليه وسلم : لا توطأ حامل حتى تضع ولا غير ذات حمل حتى تحيض حيضة . رواه ابو داوود والحاكم وصححه (٦) . انتهى .

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(١) تفسير الخازن ، ١ : ٣٦٥ وانظر صحيح مسلم ، ١٠ : ٣٦ ، تجد الحديث برواية أخرى .

(٢) أ و ج و د : يفسخ .

(٣) الخرشى ، ٢ : ٤٤٠ .

(٤) ج و الرسالة : سبى .

(٥) ابن أبى زيد القيروانى ، الرسالة ، ١١٦ .

(٦) لم نعثر على هذا النص فى تحقيق المبانى .

الفصل الثامن والثلاثون

في حصول الحرية لعبيد الكفار الحربيين اذا فروا الينا

وجواز وطء النساء اللائي[1] سبين منهم بعد الاستبراء بحيضة

وان كان لهن أزواج في دار الحرب

(٦٥ب) فأقول وبالله التوفيق : أما / حصول الحرية لمن ذكرنا بما ذكر فقد قال في المختصر : وعبد الحَرْبِيِّ – يُسْلِمُ – حُرٌّ إنْ فَرَّ[2] ، أو بَقِيَ حتَّى غُنِمَ لا إن خَرَجَ بَعْدَ إسلامِ سَيِّدِهِ[3] .
قال الخرشي في هذا المحل : يعني أن عبد الحربي اذا فر إلى بلاد المسلمين قبل إسلام سيده ، فانه يكون حرا لأنه غنم نفسه ، وسواء أسلم أم لا . فلا مفهوم لقوله : يُسْلِمُ . وإن قدم بمال فانه يكون له ولا يخمس وكذلك يكون حرا اذا أسلم وبقي عند سيده في بلاد الحرب ، حتى غنمه المسلمون وسيده مشرك . وهذا[4] اذا خرج الينا كافرا أو مسلما قبل إسلام سيده[5] . وقال عبد الباقي : وأما اذا بقي العبد حتى غُنِمَ فادعى أنه أسلم قبل ذلك ، فلا يقبل قوله لتعلق حق الغانمين[6] . انتهى . وقال عند قول المصنف : وعبد الحربي – يسلم – حر إن فر الينا أو بقي حتى غنم : وكذا[7] ان لم يسلم على المعتمد[8] .

وقال الشبرخيتي في هذا المحل : حر اتفاقا لملكه نفسه . وأما إعتاقه[9] عليه السلام من جاء اليه من عبيد[10] الطائف وقد خرجوا إليه مسلمين ، فهو حكم منه بحريتهم ، لا إنشاؤه[11] .

(٦٦أ) وأما / جواز وطء النساء اللائي[12] سبين من الحربيين بعد الاستبراء بحيضة وان كان لهن أزواج في دار الحرب ، فقد قال الخازن في تفسيره عند قوله تعالى : «والْمُحْصَنَاتُ مِنَ النِّسَاءِ إلاَّ مَا مَلَكَتْ أَيْمَانُكُمْ»[13] ، يعني السبايا اللائي[12] سُبين ولهن أزواج في دار الحرب فيحل لِمَالِكهن

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(١) في كل الأصول : التي .
(٢) ج و د : ان فر الينا .
(٣) المختصر : ١١٧ .
(٤) أ : وهكذا .
(٥) الخرشي ٣ : ٤٤٠ .
(٦) عبد الباقي ، ٣ : ١٧٦ .
(٧) أ و ب : وكذلك .
(٨) المصدر السابق .
(٩) الشبرخيتي . عتقه .
(١٠) عبيد : ليس في ب .
(١١) الشبرخيتي ، ٢ : ورقة ٨١ وجه .
(١٢) أ و ب . التي . ج و د والخازن : التي .
(١٣) سورة النساء ، ٢٤ .

وهي مكملة للحكم(١) . وفي الجامع شرح المختصر في هذا المحل : وحلف ما زال ملكه عليه ، وما باعه وما وهبه ، وما تصدق به ، وما خرج من(٢) ملكه من وجه من الوجوه وهو يمين القضاء . وقال الشبرخيتي عند قول المصنف لا ان لم يتعين مالكه : بل علم أنه لمسلم في الجملة كالمصحف والموطأ والبخاري أو لذمي فانه يجوز قسمه على المشهور بناء على تغليب ملك الغانمين ، والنقل أنه يجوز قسمه ابتداء كما قررنا(٣) . انتهى

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(١) الشبرخيتي ، ٢ : ورقة : ٧٨ ظهر ولاتوجد كل هذه العبارة في نسخة الشبرخيتي وكل ما بها هو (ما باعه ولا وهبه) شرحا لكلمات المختصر (وحلف أنه ملكه) .

(٢) د : عن .

(٣) المصدر السابق .

الفصل السابع والثلاثون

فى حكم ما حازه الكفار من أموال المسلمين

فأقول وبالله التوفيق : قال ابن جزى فى القوانين فى بيان ما ذكر: وهو على أربعة أقسام : (٦٤ب) الأول ما أسلموا عليه كان لهم والثانى ماقدموا به / بلاد المسلمين بأمان فهولهم. وقال فى المدونة: لا أحب شراء ذلك منهم . وقال ابن الموّاز : يجوز شراء ذلك منهم ، فان جاء صاحبه للحاف (١) كان له أخذه بالثمن . الثالث ما اشتراه منهم مسلم دخل اليهم (٢) بأمان فلا شىء لربه فيه إلا أن يعطى الثمن ، وإن وهبوه للداخل اليهم فصاحبه أحق به بغير ثمن إلاّ أن يكون قد كافأ (٣) على الهبة . وإن أعتق (٤) العبد أو استولد الجارية فذلك فوت (٥) ، خلافا لأشهب . الرابع ما غنمه المسلمون فهو لمن كان يملكه من المسلمين ولا تجوز قسمته إن علم به ، فان أدركه قبل القسمة أخذه بغير ثمن ، وإن لم يعلم به حتى قسم ، فهو أحق به بالثمن وفاقا لابن حنبل . وقال الشافعى : بغير ثمن ، وقال أبو حنيفة : إن غلبونا عليه ، فصاحبه أحق به قبل القسمة (٦) بغير شىء،وبعدها بالقيمة ، وإن أخذوه (٧) بغير غلبة فهو لصاحبه مطلقا (٨) . وفى المختصر : وأَخَذَ مُعَيَّنٌ وإِنْ ذِمِّيّاً ما عُرِفَ له قَبْلَهُ مَجَاناً ، وَحَلَفَ أَنَّهُ مِلْكُهُ ، وحُمِلَ لَهُ إِنْ كَانَ خَيْراً، وإلاَّ بِيعَ لَهُ ، وَلَمْ يُمْضَ قَسْمُهُ إلاَّ لِتَأَوُّلٍ (٩) عَلَى الأَحْسَنِ ، لا إِنْ لَمْ يَتَعَيَّنْ (١٠) . قال الشبرخيتى عند قول (٦٥أ) المصنف وحلف / أنه ملكُهُ : يعنى أن المسلم والذمى إذا وجد أحدهما شيئا من متاعه فى الغنيمة قبل قسمها وشهدت له البيّنة بذلك (١١)، فانه يأخذه بغير عوض ، ولكن بعد أن يحلف اليمين الشرعية أنه ما باع ولا وَهَبَ ولا خرج عن ملكه بناقل شرعى وأنه باقٍ على ملكه إلى الآن ، فيستحق قبضه وأخذه بالطريق الشرعى كاستحقاقٍ (١٢) لا بد من ثبوت ملكه مع يمينه ، وتسمى هذه اليمين (١٣)، يمين الاستظهار

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(١) ب : فحاف له كان له . ب : فحاف له . القوانين ، يحذف : لحاف .

(٢) أ : عليهم .

(٣) د : كافاه .

(٤) القوانين : عتق .

(٥) فوت : ليس فى القوانين . والفوت يعنى ما فاته ولا يمكنه أن يسترده (المحقق) .

(٦) أ . قسمه .

(٧) أ : أخذه .

(٨) ابن جزى ، القوانين ، ١٥١ .

(٩) كل النصوص : بتأول . وما أثبتناه عن المختصر .

(١٠) المختصر ، ١١٦ .

(١١) أ : فى ذلك .

(١٢) أ و ب : كالا ستحقاق .

(١٣) أ و د : هذه آلية اليمين .

خمسه(١) : يفعل فيه بالاجتهاد ، فإن شاء وضعه في بيت المال ليصرفه في مصالح المسلمين من شراء سلاح وغير ذلك مما يراه مصلحة للمسلمين ، وإن شاء قسمه فأن شاء دفعه كله لآل النبي صلى الله عليه وسلم أو لغيرهم ، أو جعل بعضه فيهم وبقيته في غيرهم(٢). وفي ضياء الخلفاء في باب بيت المال: وهذا باب سلك فيه الملوك على خلاف سيرة الأنبياء والمرسلين والخلفاء الراشدين، فكانت الملوك يدخرون الأموال ويحجبونها عن (٦٣ب) الرعية ويعدونها ليوم كريهة . وكانت الرسل / صلوات الله عليهم وسلامه والخلفاء بعدهم يبذلون الأموال ولا يدخرونها ويوسعون للرجال ، فكانت لرعايتهم (٣) الأجناد والحماة . فهذه سيرة نبينا محمد صلى الله عليه وسلم وكذلك الخلفاء الراشدون بعده ، أبو بكر وعمر وعثمان وعلى رضى الله عنهم وابنه الحسن وعمر بن عبد العزيز ولم يكن للنبي صلى الله عليه وسلم بيت مال ولا للخلفاء الراشدين بعده ، وإنما يقسمون الأموال التي تجبى من حلها بين المسلمين ، وإنما كان يفضل منها فضلات فتجعل في بيت (أو يكون الناس في غنى عنها في ذلك الوقت فتجعل في بيت(٤)) . ومن حضر من غائب أو احتاج من حاضر قسم له حظه ثم يفرق حتى لا يبقى في بيت منه درهم واحد(٥) . انتهى .

(٦٤أ) وأما حكم تعقب ما باعه ولاة الجور وعماله من / بيت المال فقد قال الونشريسي في المعيار : وقال ابن حمدين (٦) : فالصواب ألاّ يتعرض له ولا ينظر فيه(٧) وإن كانوا ظلمة غير عدول ، لأن في ذلك فتح باب مفسدة في البحث في أموال الناس لكثرة هذا الواقع . انتهى . ثم قال الشيخ أبو الحسن(٨): ولو قمنا لنقض مثل هذا والبحث فيه لم تبق معاملة الملوك ، والصواب تركه ، وإن كان الصحيح تعقب افعال قضاة الجور والعمال الظلمة وذلك لإسقاط أخف الضررين بأكبرهما . وقال(٩) عليه الصلاة والسلام : اذا اجتمع ضرران نفى الأصغرُ الأكبرَ . انتهى .

وعليكم يا إخواني بإخراج الخمس وأنواع بيت المال وإعطاء ذلك لمن يستحقه(١٠) وترك التصرف في مال الله بغير حق . وفي صحيح البخاري عن خولة الأنصارية قالت: سمعت النبي صلى الله عليه وسلم يقول : إن رجالا يتخوضون في مال الله بغير حق فلهم النار يوم القيامة(١١). نسأل الله السلامة . انتهى .

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(١) ابن ابى زيد القيروانى ، الرسالة ، ٩٨ .
(٢) ابو الحسن المالكى ، تحقيق المبانى ، ٧٠ .
(٣) سراج الملوك . فكانت الرعية هم الأجناد والحماة .
(٤) وردت هذه العبارة فى أ فقط وأيدها سراج الملوك .
(٥) سراج الملوك ، ٢٠٩ .
(٦) ج : وقال احمد . د : وقال ابن احمد .
(٧) أ : به .
(٨) ج ود . ثم قال الحسن . وما أثبتناه عن أ و ب . وقد نقل الشيخ عثمان بن فودى هذا النص بذاته فى كتاب له سماه : نجم الإخوان (مخطوط بمكتبة جامعة ابادان تحت رقم ٥٧/٨٢) والنص بكتاب نجم الإخوان يؤكد ما أثبتناه هنا .
(٩) ج ود : قال .
(١٠) ب : لمستحقه .
(١١) صحيح البخارى ، ٤ : ١٠٤ .

أنـــواع بيت المال خمـــس ، عشـــر والجزية(١)، الخراج ، فيء وفر
وما الـــذى قـــد جهلـــت أربـابـــه وارث مال لا لـــه أصحابـــه
فهـــذه السبعـــة بيـــت المــــــال لمـــن لـــه المدخل فى الحلال(٢)

وقال ابن جزى فى القوانين : وأمر الخمس فى المذهب الى اجتهاد الامام ، يأخذ منه كفايته وان كانت جميعه ويصرف الباقى فى المصالح . ثم قال : وسيرة أئمة العدل فى الفيء والخمس ، أن يبدأ بسد المخاوف والثغور واستعداد آلة الحرب وإعطاء المقاتلة ، فان فضل شيء(٣) فللقضاة والعمال وبنيان المساجد (٦٢أ) والقناطر (٤) ، ثم يفرق على الفقراء . فان فضل شيء (٥) فالامام مخير / بين تفرقته(٥) على الأغنياء وحبسه لنوائب الاسلام واختلف هل يفضل فى العطاء من له حرمة وسابقة أم يسوى (٦) بينه وبين غيره (٧) ؟

فان قلت : هل يجوز لأحد من المسلمين أن يأخذ من بيت المال قدرا زائدا على كفايته أم لا ؟ قلت : جوابه أن الأجهورى سئل عن ذلك كما فى الزهرات الوردية فأجاب بقوله : اعلم أنه ليس لأحد من المسلمين أن يأخذ من أموال بيت المال الا قدر ما يحتاج اليه حيث كان بيت المال لا يزيد على مستحقيه كما فى زماننا هذا ، فان أخذ أكثر من ذلك ضمنه لمستحقيه ووجب عليه رده ، كما أن من له من غير بيت المال (٦٢ب) ما يكفيه فيما لا بد له منه ، فليس له أن / يأخذ من بيت المال شيئا ، ويضمنه لمستحقيه ويجب عليه رده(٨) . وقال عبد المعالى فى الكتاب المذكور بعد أن ذكر كلام الأجهورى هذا ، وكلام أئمة المذهب قد استفيد مما ذكرنا من كلام أئمة المذهب أن المعول عليه الذى يجب به الفتوى أن كل واحد يعطى من بيت المال بقدر ما يغنيه سنة ، ولا يعطى أزيد من ذلك حيث كان بيت المال لا يزيد على مصارفه ، ومصارفه أقاربه صلى الله عليه وسلم ومصالح المسلمين(٩) . انتهى. وفى ضياء الخلفاء : ثم إن بيت المال لا يجب أن يستوفى فيه جميع المسلمين ولا يختص بالفقراء، بل أمره موكول الى اجتهاد الامام، والدليل عليه أن النبى (٦٣أ) صلى الله عليه وسلم قال له العباس: أعطنى من هذا المال فقال / : اذهب فخذ. فبسط ثوبه فحثا(١٠) فيه ما عجز عن حمله . ولأن أبابكر أعطى أبا أيوب الأنصارى ألفا وخمسمائة دينار وهو من أغنياء الأنصار(١١). انتهى . وفى تحقيق المبانى عند قول المصنف : وما غنم المسلمون بايجاف فليأخذ الامام

(١) شرب الزلال: فالجزية .
(٢) (الرجز) البرناوى ، شرب الزلال ، الأبيات ٣٥/٣٧ .
(٣) .... ساقطة من د .
(٤) كل الأصول : والقناطير . وما أثبتناه من القوانين وهو الصحيح .
(٥) القوانين : تفريقه .
(٦) ب : أن يستوى . . .
(٧) ابن جزى ، القوانين ، ١٥٠ .
(٨) عبد المعالى ، الزهرات الوردية ، ١ ورقة ٢٤٠ وجه .
(٩) المصدر السابق ، ا : ورقة ٢٣٢ ظهر .
(١٠) ج : فحثى .
(١١) سراج الملوك ، ٢١٢ .

الفصل السادس والثلاثـــون

فى الخمس وسائر أنواع بيت المال وحكم تعقب ما باعه ولاة الجور وعماله من بيت المال

فأقول وبالله التوفيق : واعلم أن إخراج الخمس من الغنيمة فرض على المسلمين ولو على عبيدهم ، وفى المختصر : وخمس مُسْلِمٌ ولو عبداً على الأصح – لا ذِمِّيٌّ[1] – . قال الخرشى فى هذا المحل : فان المسلم يخمس ما غنمه ولو عبدا على المشهور ، وهو قول ابن القاسم ، واليه أشار بقوله على الأصح . وسواء كان هذا المسلم ذكرا أو أنثى ، بالغا أو غيره . وأما الذمى فإنه لا يخمس ما غنمه قولا واحدا لقوله تعالى : « وَاعْلَمُوا أَنَّمَا غَنِمْتُم مِّن شَيْءٍ فَأَنَّ لِلَّهِ خُمُسَهُ »[2] . فالخطاب للمؤمنين[3]. انتهى .

وأما مصرف الخمس وسائر أنواع بيت المال فقد قال فى المختصر أيضا : فخراج الأرض[4] ، والخُمُسُ وَالْجِزيةُ ، لآلِهِ عليه السلام[5] ، ثم للمَصالح . وبُدِئ بمن فيهم المال ، ونُقل للأحوج الأكثر[6]. قال عبد الباقى فى هذا المحل : والذى فى المدونة استواء الآل والمصالح ، الا أن تحمل البداية بهم على الندب كما قال البساطى . ثم اذا أعطوا يُوَفّر[7] نصيبهم لأنهم لا يعطَوْن من الزكاة . ثم قال . (تتمة) نظم ابن جماعة ما يوضع فى بيت المال : [8]

(٩١ب) جهـات أنـواع بيت المال / سبعتهـا فى بيـت شعر حواها فيه كاتبه
خُمْسٌ وَفَيْءٌ خراجٌ ، جزيةٌ ، عُشْرٌ وإرْثُ فرض ، ومالٌ ضل صاحبه

ثم قال : ولو قال إرث مال لكان أحسن لأن بيت المال لا يرث[9] بالفرض عندنا وقوله : ومال ضل صاحبه ، أى جهل مالكه[10] . انتهى . وفى شرب الزلال :

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(١) المختصر ، ١٤٦ .
(٢) سورة الأنفال ، ٤١ .
(٣) الخرشى ، ٢ : ٤٣٣ .
(٤) المختصر : وخراجها .
(٥) المختصر : عليه الصلاة والسلام .
(٦) المختصر ، ١١٤ .
(٧) أ وعبد الباقى : فيوفر .
(٨) (البسيط) .
(٩) أ : يورث .
(١٠) عبد الباقى ، ٣ : ١٦٢ .

الفصل الخامس والثلاثون

فى حكم الغلول وأخذ المرء ما يستحقه من الغنيمة

اذا كانت لاتقسم قسمة شرعية

فأقول وبالله التوفيق : قال ابن جزى فى القوانين : الغلول حرام إجماعا ، واذا جاء من غَلّ تائبا قبل القسمة لم يؤدب ورُدّ ما غله للغنائم[1] ، وان تاب بعد افتراق الجيش أُدِّبَ وتُصُدِّقَ به ، واختلف هل تملك الغنيمة بالأخذ ، وفاقا للشافعى ، أو بالقسمة وفاقا لأبى حنيفة ؟ وعلى ذلك من وطىء جارية من المغنم[2] حدّ ، وإن سرق منه قطع ، خلافا لابن الماجِشُون فيها . وقال سحنون: إن سرق ما يزيد على حصته ثلاثة دراهم قطع ،وإلا فلا [3]. وفى المختصر فى عدّ المحرمات : والغلول. وأُدِّبَ إن ظهر عليه[4] وقال الخرشى فى هذا المحل : وعرّفه ابن عرفة بقوله : أخذ ما لم يبح الانتفاع به من الغنيمة قبل حوزها (٦٠ب) وقال ابن القاسم / يؤدب الغال ، فان جاء تائبا سقط عنه التعزير لأنه يسقط بالتوبة . واعلم أن الغال لا يمنع سهمه من الغنيمة لزوم الأدب له اذا ظهر عليه قبل أن يجىء تائبا ، وهذا كله اذا كان قبل حوز المغنم ، وأما بعده فانه يُحَدّ[5] .

وقال الشبرخيتى عند قول المصنف وأُدِّبَ ان ظهر عليه : لا إن جاء تائبا ، خلافا لسحنون ، ولو بعد القسم وتفرق الجيش وتَعَذُّر الرد ، وهو ظاهر ما حكاه عن ابن حبيب فى النوادر ، ويتصدق به عنهم بعد دفع خُمسه للامام[6] . وقال عبد الباقى فى هذا المحل : وأُدِّبَ الغال ان ظهر عليه ولا يمنعه ذلك سهمه من الغنيمة الا[7] إن جاء تائبا فلا يؤدب ولو بعد القسم وتفرق الجيش وتعذر الرد . ويتصدق به عنهم بعد دفع خمسه للامام[8] .

وأما أخذ المرء ما يستحقه من الغنيمة اذا كانت لا تقسم قسمة شرعية فقد قال الشبرخيتى وعبد الباقى : ليس من الغلول من يجاهد مع والٍ جائر لا يقسم الغنيمة القسمة الشرعية وأخذ ما يستحقه منها فقط ، فان (٦١أ) ذلك سائغ ، لأنه بمثابة من أخذ عين شيئه ، قاله الزرقانى / ونقله البرزلى[9] . انتهى .

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(١) القوانين : للغنائم .

(٢) أ : الغنائم . القوانين : المغانم .

(٣) ابن جزى ، القوانين ، ١٤٨ .

(٤) المختصر ، ١١٢ .

(٥) الخرشى ، ٣ ، ١١٤ .

(٦) الشبرخيتى ٢ : ورقة ٦٧ وجه .

(٧) كل الأصول : لا . وما أثبتناه عن عبد الباقى .

(٨) عبد الباقى ، ٣ : ١٤٦ .

(٩) الشبرخيتى ، ٢ : ورقة ٦٧ وجه . عبد الباقى ، ٣ : ١٤٦ . الا أن الألفاظ تطابق نص الشبرخيتى وتختلف من ألفاظ عبد الباقى .

فلا حق لهم فى الغنيمة واذا افترق الجيش فريقين فغنم كل فريق فى جهته(1) فهم شركاء اذا كان كل فريق بحيث يغيث(2) صاحبه إن احتاج اليه . واذا خرجت سرية عن(3) الجيش فغنمت بموضع قريب يصل اليهم فيه(4) غوث الجيش شاركها الجيش فى غنيمتها ، وإن بعدت لم يشاركهم (5) .وإن غنم الجيش بعدها فسهمها ثابت إن خرجت باذن الامام . وقال أبو حنيفة إن جاءهم مدد بعد انقضاء الحرب وحوز الغنيمة شاركهم(6) فيها(7) . وقال فى بيان حكم سهم الفرس وغيره من الدواب : للراجل سهم وللفارس ثلاثة ، له واحد وللفرس اثنان . وقال أبو حنيفة للفرس واحد . ويستوى فى السهم : الفرس المملوك ، والمحبوس ، والمكترى ، والمعار ، والمغصوب ، وسهمه فى ذلك كله لراكبه ، وعليه فى الغصب أجرة المثل . ومن له أفراس أسهم لواحد منها ولا يسهم لما فوق الاثنين إجماعا (8) ، ولا الثانى / على المشهور خلافا (٦٠ أ) لابن حنبل وسهم الأسير كغيره . ولا يسهم للبغال (9) ولا للحمير ولا للابل ولا للفيل ولا للأعجف الذى لا ينتفع به من الخيل بخلاف الرهيص والمريض مرضا خفيفا(10) . انتهى .

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(1) ب و د : جهة .

(2) ب و د : يغيب .

(3) ج و د : على .

(4) فيه : ساقطة من أ والقوانين .

(5) القوانين : لم يشاركوهم .

(6) القوانين : شاركوهم .

(7) ابن جزى ، القوانين ، ١٥٠ .

(8) أ و ج و د : اجماعا اتفاقا . وما أثبتناه عن ب والقوانين .

(9) كل الأصول : البغال والحمير ولا الابل ولا الفيل ولا الأعجف . وما أثبتناه عن القوانين .

(10) ابن جزى ، القوانين ، ١٥٠ .

الفصل الرابع والثلاثون

فى كيفية قسم الغنيمة

فأقول وبالله التوفيق : قال ابن جزى فى القوانين على بيان ذلك : يميز الأمير[1] الجيش فيقسم عليهم أربعة أخماس[2] الغنيمة وهم فى دار الحرب . وقال أبو حنيفة لايقسم[3] حتى تصير فى دار الاسلام[4] ، وهو مخير بين قسمة أعيانها وأثمانها يفعل من ذلك ما يراه أصلح . وقال فى بيان من يُسْهَمُ (٥٩ أ) لــه (*) : أما المسلم الحر الذكر / البالغ فيسهم له اتفاقا . وأما الكافر فــإن لم[6] يقاتل لم يسهم له ، وإن(*) قاتل فثلاثة أقوال يفرق فى الثالث بين أن يفتقر المسلمون الى معونته فيسهم[7] أم لا ، فلا . العبد[8] كالكافر ، والصبى المطيق للقتال يسهم له ، وقيل لا يسهم وفاقا لهما[9] . والمرأة إن لم تقاتل لم يسهم لها ، وإن قاتلت ففى استحقاقها قولان . والتاجر والأجير يسهم لهما إن قاتلا فى المشهور . ويسهم للأعرج[10] والمجذوم وأقطع اليسرى بخلاف الأعمى والمقعد وأقطع اليدين[11] . وقال فى بيان ما تستحق به الغنيمة : تستحق بحضور القتال وإن غنم بعده فى[12] المشهور ،وقيل بحضوره إن غنم فيه ، وقيل بالإدراب ففى[13] المشهور من مات بعد القتال ، أو أرسله الأمير فى منفعة المسلمين ، أو مات فرسه أو باعه ، فسهمه ثابت ، ومن تخلف فى الطريق تاركا للغزو فلا سهم له ، فان ضل عن الجيش حتى غنموا فثلاثة أقوال : الإسهام (٥٩ب) ونفيه والتفرقة وهو المشهور بين أن يضل قبل الإدراب[14] فلا سهم له / وبعده فسهمه ثابت[15] ، وكذلك السفن إذا ردّت[16] الريح بعضها. وإن أتى الجيش على نهر فجازه[17] قوم وغنموا وتخلف قوم

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(١) أ : الا مام .

(٢) القوانين : أقسام .

(٣) القوانين : لا يقسم عليهم .

(٤) القوانين : فى دار الحرب .

(٥) .... (*) ساقطة من ج .

(٦) القوانين : لا .

(٧) ج ود : الى معونته فيقسم له .

(٨) ب : فالعبد . ج : العبد الكافر . د . العبد يسهم له ولا يسهم له كالكافر . القوانين : كالعبد الكافر .

(٩) القوانين . لهم . ولهما يعنى الشافعى وأبا حنيفة (أنظر القوانين لا بن جزى ، ١١) .

(١٠) فى كل الأصول : الأعرج وما أثبتناه عن القوانين .

(١١) ابن جزى ، القوانين ، ١٤٩ .

(١٢) القوانين : على .

(١٣) القوانين : فعلى .

(١٤) ج ود : إدراب . أدرب القوم اذا دخلوا أرض العدو (المحقق) .

(١٥) القوانين : أو بعده فسهم ثابت .

(١٦) د : أردت .

(١٧) القوانين : فجاز القوم ليغنموا أو تخلف قوم .

وفاقا(١) للشافعي ، وقيل يخير الامام وفاقا(١) لأبى حنيفة ، وإن فتحت صلحا فهى على(٢) ما يقتضيه الصلح .

وأما الأطعمة والأشربة فيجوز الانتفاع بها من غير قسم ما داموا فى دار الحرب ويجرى(٣) ذلك فى القوت والفواكه واللحم والعلف بقدر الحاجة لمن كان محتاجا اليه أو غير محتاج ، فان فَضَل له منه بعد الدخول الى أرض الاسلام وتفرق الجيش كثير ، تصدق به أو / يسير انتفع به . ويجوز ذبح (٥٨ب) الأنعام للأكل وأخذ الجلود للنعال والخفاف ، وقيل لا يجوز ذبحها ولا يفتقر فى ذلك لإذن الامام . واذا ضم الامام ما فضل عن(٤) ذلك ثم احتاج الناس اليه أكلوا منه(٥) بغير إذنه ، ويأخذ السلاح يقاتل به ثم يرده وكذلك الدابة يركبها الى بلده ثم يردها الى الغنيمة وكذلك الثياب يلبسها ثم يردها . وقال ابن وهب لا ينتفع بسلاح ولا بثوب(٦) ولا دابة(٧) . وفى مختصر الخليل : وجازَ أخْذُ محتاجٍ نَعْلا ، وحِزَاماً ، وإبْرَةً ، وطعاماً ، وإنْ نَعَماً ، وعَلَفاً : كثوبٍ ، وسلاحٍ ، ودابةٍ لِيَرُدَّ ، وَرَدَّ الفَضْلُ إنْ كَثُرَ ، فإنْ تَعَذَّرَ تُصُدِّقَ به(٨) . انتهى .

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(١) ب : وفقا .

(٢) على : ساقطة من د .

(٣) ج و د : ويجوز ذلك . القوانين : ويدخل فى ذلك .

(٤) ب و القوانين : من .

(٥) ب و د : أكلوه منه .

(٦) ج و د : ولا ثوب .

(٧) ج : ودابة ليردون الفضل . ابن جزى ، القوانين ، ١٤٩ .

(٨) المختصر ، ١١٢ .

الفصل الثالث والثلاثون

فى أصناف الغنائم[1]

قال ابن جزى فى القوانين فى مسألة أصناف الغنائم : الغنائم سبعة ، رجال الكفار ونساؤهم وصبيانهم وأموالهم وأرضهم وأطعمتهم وأشربتهم. فاما الرجال فيخير الامام فيهمبين خمسة أشياء : القتل والمن والفداء والجزية والاسترقاق[2] ويفعل الأصلح من ذلك. . . وأما النساء والصبيان فيُخيَّر أمام فيهم بين المن والفداء والاسترقاق(٥) . . . وأما الأموال فهى أربعة أنواع أحدها لله خالصا وهو الجزية والخراج وعشر أهل الذمة وأهل الصلح وما أخذ بغير قتال وذلك كله هو الفىء ، فيفعل الامام فى ذلك ما يراه مصلحة ولا يخمس خلافا للشافعى . والثانى لمن أخذه ولا خُمُسَ فيه وهو ما أخذه[3] من مكان[4] يبلاد الحرب من غير إيجاف كالأسير يهرب منهم بمال ، وما طرحه العدو خوف الغرق الا أن يكون ذهبا . . . فيجرى على حكم الركاز . والثالث خُمُسُه لله وبقيته لمن أخذه[5] وهو[6] الغنيمة والركاز ونعنى بالغنيمة ما أخذه[7] على (٥٨ أ) وجه الغلبة ، ويجرى مجراه / ما أُخذ على وجه السرقة والاختلاس . والرابع مختلف فيه هل يخمس أم لا[8] ، وهو ما غنمه العبيد ولا حر معهم والنساء والصبيان ولا رجل معهم ، وما جلى عنه أهله لغير[9] نزول جيش فهو لا شىء[10] فيه للجيش ، وقيل يخمس .

اما الأرضون فان فتحت عنْوة فهى على[11] ثلاثة أقسام : بعيد عن قهرنا[12] فيخرب بهدم أو بحرق، أو تحت قهرنا غير أنه لا يسكن ، فبعطيه[13] الامام لمن فيه نجدة ولا حق للجيش فيه ، وقريب مرغوب فيه فالمشهور أنه يكون وقفا يصرف خراجه فى مصالح المسلمين من أرزاق المجاهدين والعمال وبناء[14] القناطر[15] والمساجد والأسوار وغير ذلك . وقيل إنه يقسم(٥) كسائر أموال الغنيمة

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(١) العبارة التقليدية (فأقول وبالله التوفيق) ساقطة من كل الأصول الا أن ناسخا أثبتها فى هامش (ج) بخط مختلف .

(٢) ٠٠٠٠ (٥) ساقطة من ج .

(٣) ج : وما أخذه .

(٤) كل الأصول (من ركاز) وما أثبتناه من القوانين وهو الصحيح .

(٥) ج : لمن أخذ .

(٦) د : وهى .

(٧) أ : بما أخذناه .

(٨) أ و ب : أولا .

(٩) القوانين : من غير .

(١٠) القوانين : فهو فىء لا شىء فيه .

(١١) على : ساقطة من ج .

(١٢) القوانين : قطرنا .

(١٣) القوانين : فيقطعه .

(١٤) ٠٠٠٠ (٥) ساقطة من د .

(١٥) فى كل الأصول : القناطير . وفى القوانين : من أرزاق المجاهدين وبناء القناطر .

ألفا فهو قيد في المفهوم . وان[1] بلغ عدد المسلمين اثنى عشر ألفا حرم الفرار(ه) وان زاد عدد الكفار على الضعف[2] ، حيث لم تختلف كلمتهم وأن يكـــون[3] معهم السلاح ، فان اختلفت [4] كلمتهم جاز . (٥٧ب) وكذا ان كان العدو بمحل مدد ولا مدد للمسلمين ، وان اعتبر هذا فيما إذا بلغوا اثنى عشر / ألفا اعتبر فيما اذا بلغ المسلمون[5] النصف وكانوا دون اثنى عشر ألفا[6] . انتهى .

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(١) أ : فان بلغ المسلمون . ب : فان بلغ عدد المسلمين .

(٢) كل الأصول : النصف . وما أثبتناه عن الخرشي .

(٣) ج : يكونوا .

(٤) ج و د : اختلف .

(٥) ج : المسلمين .

(٦) الخرشي ، ٢ : ٤١٣ .

الفصل الثاني والثلاثون

في حكم الفرار من الكفار[1]

فأقول وبالله التوفيق :فاعلم أن الفرار من الزحف حرام إجماعاً . وفي الرسالة : والفرار من العدو من الكبائر اذا كانوا مِثْلَيْ عدد المسلمين فأقل ، فان كانوا أكثر من ذلك فلا بأس بذلك[2] . وقال ابن جزى في القوانين : ولا يجوز الانصراف من[3] صف القتال اذا كان فيه انكسار[4] المسلمين وان لم يكن (٥٧ أ) فيجوز لمتحرف للقتال[5] أو متحيز الى فئة . والتحرف للقتال أن يُظهر الفرار / وهو يريد الرجوع ، مكيدة في الحرب والتحيز الى الجماعة الحاضرة جائز واختلف في التحيز الى الجماعة من المسلمين[6] غائبة أو مدينة .

ولا يجوز الانهزام إلا اذا زاد الكفار على ضعف المسلمين ، والمعتبر في ذلك العدد[7] في المشهور ، وقيل القوة إذا بلغ عدد المسلمين اثني عشر ألفا لم يحل الانهزام ولو زاد الكفار على الضعف .

وان[8] علم المسلمون أنهم مقتولون فالانصراف أولى . فان[9] علموا مع ذلك أنهم لا تأثير لهم في نكاية العدو وجب الفرار ، قال[10] ابو المعالي: لا خلاف في ذلك[11] . وفي المختصر في عدّ المحرمات : وفرارٌ، إن بلغ المسلمون النصفَ ولم يبلغوا إثنيْ عشر ألفاً ، إلا تحرُّفاً[12] وتحيُّزاً إنْ خيفَ [13] وقال الخرشي في هذا المحل: والواو في قوله ولم يبلغوا اثني عشر ألفا واو الحال وهو راجع لمفهوم[14] قوله إن بلغ[15] المسلمون النصف. إن نقصوا عن النصف فيجوز الفرار(٥) والحال أنهم لم يبلغوا اثني عشر

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(١) في الزحف : زيادة في أ .
(٢) بذلك : ساقطة من ب . ابن أبي زيد القيرواني ، الرسالة ، ٩٧ .
(٣) ب : في .
(٤) القوانين : انهزام .
(٥) القوانين : لقتال .
(٦) ج : الى الجماعة المسلمين . القوانين : الى جماعة غائبة .
(٧) القوانين : فالمعتبر العدد في ذلك .
(٨) ج : فان .
(٩) القوانين : وان .
(١٠) القوانين : وقال .
(١١) ابن جزى ، القوانين ، ١٤٦ .
(١٢) الا تحرفا : ساقطة من ج .
(١٣) المختصر ، ١١٣ .
(١٤) أ : المفهوم .
(١٥) ج : بلغوا المسلمون .
(٥) .... (٥) ساقطة من ج .

السفينة لنجاة الباقين(1) ، فان نجاتهم ليس كليا ، أى متعلقا بكل الأمة ، أو ضرورية كرمى أهل قلعة تترسوا بالمسلمين فان فتحها ليس ضروريا ، فلا يجوز بحال . وبيّن قبل هذا الكلام بقليل : ان المصلحة اذا كانت ضرورية كلية قطعية(2) معتبرة قطعا ، بقوله بعد أن ذكرها : فانها مما دلّ الدليل على اعتباره . فهى حق قطعا وذلك كرمى الكفار المترسين بأسرى(3) المسلمين فى الحرب فانه يجوز ولو أدّى الى قتلهم (56ب) اذا خيفَ من ترك رميهم اصطلام المسلمين . ففى هذا قتل مسلم / لم يذنب . لكن لما ذكرنا من اجتماع أمور ثلاثة فى هذه المصلحة : كونها ضرورية لأنها لا يمكن تحصيلها(4) بطريق آخر ، وكلية لرجوعها الى كافة الأمة(5) وقطعية لتحصيلها(ه) المصلحة بالقطع لا بالظن، وللقطع(6) بحصول المفسدة(7) بلونها . والدليل على اعتبار هذه الصورة ما علـم من الشرع من تقديم حفظ الكلى على الجـزئى وأن حفظ أصل(8) الاسلام على(9) اصطلام الكفار أهم فى نظر الشرع من حفظ طائفة مخصوصة(10) . انتهى .

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(1) ج ود : النجاة الباقين .
(2) قطعية : ساقطة من ب .
(3) ج : بأسارى .
(4) .... (5) ساقطة من د .
(5) ج : الكافة الأمة .
(6) ج و د : والقطع
(7) د : المفسد .
(8) ب : أهل .
(9) أ و ب : عن .
(10) لم نتمكن من الحصول على هذا الكتاب للسيوطى .

الفصل الحادى والثلاثون

في حكم قتال الكفار اذا تترسوا بذريتهم أو بالمسلمين(١)

فأقول وبالله التوفيق : قال في المختصر : وإنْ تَتَرَّسُوا بِذُرِّيَّةٍ تُرِكُوا إلا لِخَوْفٍ ، وَبِمُسْلِمٍ لَمْ يُقْصَدِ التُرْسُ ، إنْ لَمْ يُخَفْ عَلَى أَكْثَرِ المُسْلِمينَ(٢) . قال الخرشى عند قوله وبمسلم : وان تترسوا بالمسلمين(٣) فانهم يقاتلون ولا يقصد الترس بالرمى . . . الا أن يخاف منهم على أكثر المسلمين فيسقط حينئذ حرمة الترس . ثم قال : الا أنه ذكر فى الجواهر قيوداً زائدة(٤) حيث قال : اذا تترسوا بهم فى الصف ، ولو تركناهم لانهزم المسلمون وعظم الشر وخيف استئصال قاعدة(٥) الاسلام وجمهورهم وأهل القدوة(٦) منهم ، (وجب الدفع وسقط مراعاة الترس(٧)) وقال عبد الباقى فى هذا المحل : وإنما تركوا اذا تترسوا بذرية وقوتلوا(٨) اذا تترسوا بمسلم ... مع أن المسلم أشرف من ذريتهم ،لأن نفوس أهل (٥٦ أ) الاسلام جبلت على بغض أهل (٩) الكفر ، فلو أبيح قتالهم / بتترسهم بذريتهم مع عدم قصد الترس ، لربما أدّى ذلك لقتل ذريتهم ، لعدم تحفظ المسلمين منه لبغضهم(١٠) الذرية ولا كذلك(١١) اذا تترسوا بالمسلمين قاله البرمونى (١٢) . . .

قلت : وشرط(١٣) الخوف المذكور فى قول المختصر إن لم يُخَفْ على أكثر المسلمين القطع أو الظن القريب منه . قال عبد الرحمن السيوطى فى شرح الكوكب : اما اذا لم يقطع ، أو يظن ظنا قريبا منه(١٤) باستئصالهم المسلمين، فلا يجوز الرمى . وكذا لو لم يكن المصلحة(١٥) كلية كرمى(١٦) بعض المسلمين من

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(١) أ : وبالمسلمين .
(٢) المختصر ، ١١٢ .
(٣) د : أى بالمسلمين . الخرشى : بمسلمين .
(٤) د : زائدا .
(٥) أ : قواعدة .
(٦) القوة : الخرشى .
(٧) (وجب الدفع وسقط مراعاة الترس) : زيادة من شرح الخرشى . الخرشى ، ٣ : ١١٢ .
(٨) وقوتلوا : ساقطة من ج .
(٩) أهل : ساقطة من د .
(١٠) أوج وشرح عبد الباقى : لبغضهم . د . ببغضهم الذرية .
(١١) ب : وكذلك . ج ود : والامر كذلك . وما أثبتناه من أ وشرح عبد الباقى .
(١٢) عبد الباقى ، ٣ : ١٤٤ .
(١٣) ج : وشروط .
(١٤) ج ود : منهم .
(١٥) ج : وكذلك لم يكن لمصلحة .
(١٦) كرمى : ساقطة من ج .

عند قول المصنف بقطع ماء : أي عنهم أو عليهم . وقال عند قوله وآلة : من رمى بمنجنيق وضرب بسيف وطعن برمح ونبل ولو كان فيهم النساء والصبيان والذرية كما فعل عليه الصلاة والسلام بأهل الطائف . ثم قال بعد كلام : حكى ابن زرقون الأنفاقَ على قتالهم بالنار حيث كان الفريقان في السفن ولم يكن فيهم مسلم ولو أمكن غيرها قائلا إن لم نرمهم بها رَمَوْنا بها .ولو قال إن لم يمكن[1] غيرها ببَرٍّ ولم يكن فيهم (٥٥أ) مسلم مطلقا أي[2] ببر أو بحر ، وحاصله أنهم يقاتلون في السفن بالنار إن لم يكن فيهم مسلم مطلقا/ أي (٥) ويقاتلون بها في غير السفن إن لم يكن فيهم مسلم أيضا ولم يكن غيرها . واعلم أنه اذا كان فيهم مسلم وكان عدم رميهم بالنار يؤدى الى قتل جمع من المسلمين جاز قتالهم بها ارتكابا لأخف[3] الضررين[4] وقال الخرشي عند قول المصنف وإنْ بسفن : مبالغة في المفهوم أي فان أمكن غيرها أو كان فيهم مسلم لم يُرْمَوْا بها ، وان كنا نحن وإياهم في السفن على المشهور ، فأولى لو[5] كانوا هم ونحن في حصن . وقصد بالمبالغة الرد على حكاية ابن زرقون الاتفاق على جواز رميهم بها[6] اذا كنا نحن وهم في السفن لأنّا إن لم نرمهم بها رَمَوْنا بها . وقال عند قوله وبالحصن بغير تحريق وتغريق مع ذرية : تقدم أن المشركين اذا كانوا في الحصن ومعهم ذَرَاريهم أنه يجوز رميهم بالمجانيق [7] ولا يجوز تحريقهم ولا تغريقهم[8] . ومثل الذرارى النساء . ومن باب أولى اذا كان في الحصن مسلم إن لم يُخَفْ على المسلمين[9] . وفي المختصر بعد قوله : وجَازَ أخْذُ محتاج . . . وتخريبٌ وقَطْعُ نَخْلٍ ، وحَرْقٌ ، إنْ أنكَى ، أوْ لَمْ تُرْجَ ، والظَّاهِرُ أنَّهُ مندوبٌ كَعَكْسِه . . . وذَبْحُ حيوانٍ ، وعَرْقَبَتُهُ وأُجْهِزَ عليه[10] وفي (٥٥ب) النَّحْلِ إنْ كَثُرَتْ ولم يُقْصَدْ عَسَلُهَا / روايتان. وحُرِّقَ إنْ أَكَلُوا المَيْتَةَ ، كَمَتَاعٍ (٥) عُجِزَ عَنْ حَمْلِهِ[11] . انتهى .

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(١) ج : تكن .

(٢) .... (٥) ساقطة من د .

(٣) أ وب وج : بأخف . وما أثبتناه من د والشبرخيتي .

(٤) الشبرخيتي ، ٢ : ورقة ٦٥ وجه .

(٥) أ وج ود : ولو . وما أثبتناه من ب والخرشي .

(٦) (٦) بها : ساقطة من ج ود .

(٧) ج ود : بالمنجنيق .

(٨) ج ود : وتغريقهم .

(٩) الخرشي ، ٢ : ١١١ .

(١٠) .... (٥) ساقطة من د .

(١١) المختصر ، ١١٢ .

/الفصـــل الثـــلاثون

(٥٤ أ)

في وجوه(١) القتال

فأقول وبالله التوفيق : إن وجوه القتال كثيرة . قال ابن جزى فى القوانين فى مسألة وجوه القتال : ولا بأس بهدم قراهم وحصونهم وتغريقها بالماء (٢) وقطعه عنهم وإخرابها(٣) ، والرمى عليهم بالمنجنيق ، وفى النار خلاف ، ولا بأس بقطع شجرها المثمرة (٤) وغيرها . واذا (٥) كان معهم أسارى مسلمون(٦) لم تحرق ولم تغرق . واختلف فى المنجنيق وقطع الماء . وان كان معهم نساء وصبيان فأربعة أقوال : جواز المنجنيق دون التحريق(٧) والتغريق وهو المشهور ، وجواز الجميع ، ومنع الجميع ، ومنع التحريق(٧) . ولو تترسوا بالنساء والصبيان تركناهم الا أن يُخاف من تركهم على المسلمين فيقاتلون وان اتقوا بهم ، ويجوز قتل دوابهم خلافا للشافعى وابن وهب . وروى عن مالك التخيير بين قتلها وعرقبتها . واتفق على قتل الفرس تحت الفارس . وفى النحل خلاف . ولا يجوز حمل رءوس الكفار من بلد الى بلد ولا حملها (٥٤ب) إلى الولاة(٨). وفى المختصر فى عدّ المحرمات : وحملُ رأس لبلد . قال / الشبرخيتى : والظاهر أن محل ذلك ما لم يكن(٩) فيه مصلحة (١٠) كاطمئنان القلوب بالجزم بموته، فقد حمل رأس كعب بن الأشرف(١١) للمدينة(١٢) ورأس أبي جهل لقريش(١٣) .وفى المختصر فى بيان ما يقاتلون به : بقطع ماء وآلة وبنار ، إن لم يُمكن(١٤) غيرها ، ولم يكن فيهم(١٥) مسلم ، وإنْ بسفن . وبالحِصْن بغير تحْريق(١٦) وتغْريق مع ذُرية . وإن تترّسوا بذُرّية تُرِكوا ، إلا لِخَوْف(١٧). قال الشبرخيتى

(١) أ : وجوب .
(٢) القوانين : فى الماء .
(٣) ج والقوانين : وخرابها .
(٤) القوانين : المثمر .
(٥) القوانين : وإن .
(٦) ب : المسلمون .
(٧) ج : التحرق .
(٨) ابن جزى ، القوانين ، ٤٦ .
(٩) ج ود : تكن .
(١٠) القوانين : مصلحة شرعية .
(١١) ج : اشرف .
(١٢) أ : الى المدينة .
(١٣) الشبرخيتى ، ٢ : ورقة ٦٧ ظهر .
(١٤) ج : يكن .
(١٥) أ و ب : فيها . ج : فيه .
(١٦) ج : غرق . د : حرق .
(١٧) د : تركوا الخوف .
(١٧) المختصر ، ١١١ .

وروى أنه صلى الله عليه وسلم رمى وقال : أنا ابن العواتك[1] من سليم . أى ذوات الروائح الطيبة من سليم[2] . ويذكر[3] القبيلة كقول مكحول : أنا الغلام الهُذَلى . وقال عند قوله والرجز : ابن عرفة[4] وهو فى حين الحرب أوضح لقوله صلى الله عليه وسلم فى غزوة حنين حين[5] نزل عن بغلته واستنصر[6] :

أنا النبى لا كذب أنا ابن عبد المطلب[7] . انتهى .

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(١) فى كل الاصول : العواتق . وما أثبتناه عن الشبرخيتى .

(٢) د : من بنى سليم .

(٣) ب وج : ويذكر .

(٤) د : والراجز بن عرفة . وما أثبتناه من باقى الأصول والشبرخيتى . ولا يفهم معنى لوجود (ابن عرفة) فى هذا السياق .

(٥) حين : ساقطة من ب .

(٦) أ و د : انتصر .

(٧) (مجزوء الرجز) الشبرخيتى ، ٢ : ورقة ٩١ ظهر .

الفصل التاسع والعشرون

في حكم الافتخار عند الرمي والرجز والتسمية والصياح في الجهاد

فأقول وبالله التوفيق : إن جميع ما ذكر جائز . وفى المختصر فى آخر باب المسابقة : وجازَ فيما عداه مَجاناً ، والافتخارُ عند الرَّمْيِ ، والرَّجزُ ، والتسميةُ والصِّياحُ ، والأَحبُّ ذكرُ الله لا حَديثُ الرَّامى (١) . قال الخرشي فى هذا المحل : يعنى أنه يجوز الافتخار أى ذكر المفاخر عند الرمى ، بالانتساب الى أب أو قبيلة لأنه أغرى(٢) لغيره ، وبالتبختر فى المشى فى الحرب كفعل أبى دجانة . فقال له عليه السلام : إنها مشية يبغضها الله الا فى مثل هذا الموضع . وكذلك يجوز الرجز عند الرمى لخبر مسلم عن سلمة بن الأكوع : خرجت فى آثار القوم أرميهم بالنبل وأرتجز وأقول(٣) :

أنـا أبـن الأكـوعِ ... اليـوم يـوم الرُضّعِ (٤)

وكذلك تجـوز التسمية عند الرمى كأنا فلان بن فلان . ويجـوز الصياح عند الرمى لمـا فيه من التشجيع وإشغال(٥) النفس عن التعب (٦) . وقال عند قوله أيضا: والأحبُ ذكرُ الله لا حـديثُ (٥٣ب) / الرامى : أى والأولى من ذلك كله ذكر الله عند الرمى بالتكبير وغيره لا حديث الرامى (٧) بأن يتمدح ويذكر مناقبه .

وفى بعض النسخ « الرمى » فى (٨) موضع « الرامى » والمراد بحديثه الافتخار والرجز والتسمية والصياح (٩) . وفى بعض النسخ لأحاديث — بلام الجر والتعليل — جمع حديث وهو المروى عنه عليه السلام(١٠) وهى متعلقة بجاز ، أى وجاز الافتخار وما معه لأجل الأحاديث الواردة ، والا فالأصل فيهما المنع ، لمـا فيها من الاعجاب والخيلاء. تنبيه : ويجرى فى قتال العدو وفى القتال(١١) الجائز بين المسلمين قوله والافتخار الخ(١٢) . وقال الشبرخيتى عند قول المصنف: والافتخار عند الرمى : بأن يذكر مناقبه.

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(١) المختصر ، ١٢٠ .
(٢) ج ود : أغزى . الخرشى : إغراء .
(٣) صحيح مسلم : أقول .
(٤) صحيح مسلم ، ١٢ : ١٧٨ .
(٥) ب و ج : اشتغال .
(٦) أ : العب : الخرشى ٣ : ٤٥٤ .
(٧) أ : لا حديث الرمى . ب ود : لأحاديث الرامى . ج : لا حديث . وما أثبتناه من الخرشى .
(٨) فى : ساقطة من أ وب .
(٩) الصياح : ساقطة من أ وب .
(١٠) ج : الصلاة والسلام .
(١١) ب : قتال .
(١٢) الخرشى ٣ : ٤٥٥ .

المصنفين كثرة التكبير عند اللقاء فشل ، غُضُّوا الاصوات وأجلوا (1) السكينة وأخفوا الجبن واذكروا الضغائن ، فانها تبعث على الإقدام والتزموا الطاعة (2) فانها حصن المحارب . اذا وقع اللقاء برز القضاء ، (53 أ) ربَّ مكيدة أبلغ من نجدة ، رب كلمة هزمت عسكرا ، الصبر سبب النصر . الظفر مع الصبر / ، لا ظفر مع بغى . لا تجبنوا عند اللقاء ولا تمثلوا (3) عند القدرة ، ولا تسرفوا(4) عند الظهور ولا تغلوا عند الغنائم ونزهوا الجهاد عن غرض الدنيا(5) . انتهى .

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(1) سراج الملوك : وتجلبوا .

(2) أ : الطاعات .

(3) سراج الملوك : ولا تقتلوا .

(4) أ وج ود : تصرفوا .

(5) الطرطوشى : سراج الملوك ، الباب الحادى والستون ، ص ٢٩٨-٣١٢ .

تخفق وطبوله تضرب كان حصنا للجناحين يأوي اليه كل منهزم . واذا انكسر القلب تمزق الجناحان ، ولا يضر انكسار جناحي العسكر مع ثبات القلب ثم يرجع (١) الفارُّ الى القلب ، وقَلَّ عسكر انكسر قلبه فأفلح . ومن الأهم اختيار الشجعان ، فأختر ذوي البسالة ولا عليك ألاّ يكثروا(٢) ولا تنس قول الشاعر :

والناس ألـفٌ منهم كـواحـد   وواحـد كالألـف إن أمرٌ عنا(٣)

ومما يلزم قائد الجيش اذا وصل الى محل اللقاء ، أن يخفي علامته التي هو مشهور بها فان عدوه قد استعلم حليته (٤) ولون فرسه ودابته فلا يلزم خيمته ليلا ولا نهـارا (٥) وليبدل(٦) زيه ويغير خيمته ويعمي مكانه كيلا يلتمس عدوه غرته ، فاذا سكنت الحرب فلا يمش في النفر اليسير من قومه خارج عسكره ، فانّ عيون عدوه قد أذْكيت (٧) عليه . وعلى هذا الوجه كسر المسلمون جيوش إفريقية عند فتحها ، وذلك أن الحرب سكنت في وسط النهار فخرج مقدم العدو يمشي خارج العسكر ، فجاء الخبر الى عبد الله بن أبي السرح (٨) ، فخرج فيمن وثق به من رجاله فحمل على العدو فقتل الملك وكان الفتح .

(٥٢ب) وأما صفة اللقـاء فمن أحسن / الترتيب فيه أن تتقلد لـه الرجال بالدرق الكاملة والرماح الطوال والمزارق (٩) المسنونة النافذة، فيصفوا صفوفهم ويركزوا مراكزهم ورماحهم في الأرض(١٠) وكل رجل منهم قد ألقم الارض ركبته اليسرى ، وترسُه قائم بين يديه ، وخلفهم الرماة المختارون الذين(١١) تمزق سهامهم الدروع ، والخيل خلف الرماة . فاذا حمل الكفار(١٢) على المسلمين لم يتزحزح الرجالة عن هيئتها ولا قام رجل على قدميه ، فاذا قرب العـدو رشقهم الرماة بالنشاب والرجالة بالمزارق وصدر(١٣) الرماح تلقاءهم فياخذون يمنة ويسرة فيخرج خيل المسلمين فتناول(١٤) منهم ما شاء الله .

وأول الظفر الاجتماع ، وأول الخذلان الافتراق ، وعماد الجماعة السمع والطاعة . وقال (١٥) بعض

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(١) أ : حتى يرجع .
(٢) د : ألا يكثر .
(٣) (الرجز) .
(٤) هكذا في كل الأصول ولربما يكون الصحيح ما في سراج الملوك وهو : حليه .
(٥) كل الأصول : ونهارا وما أثبتناه من سراج الملوك
(٦) أ : ويبدل .
(٧) سراج الملوك : قد أدليت .
(٨) ب : عبد الله بن السرح . ح و د : عبد الله بن السراح .
(٩) هكذا في كل الاصول وفي سراج الملوك : المزاريق .
(١٠) سراج الملوك : ورماحهم خلف ظهورهم في الأرض .
(١١) سراج الملوك : التي .
(١٢) سراج الملوك : الروم .
(١٣) سراج الملوك : وصدور الرماح تتلقاهم .
(١٤) سراج الملوك : فتنال .
(١٥) ج ود : قال .

اسْتَزَلَّهُمُ الشَّيْطَانُ بِبَعْضِ مَا كَسَبُوا (١) . وقال صلى الله عليه وسلم : الحرب خدعة(٢) .
ومن حزم الملك ألا يحقر(٣) عدوه وإن كان ذليلا ولا يغفل عنه وإن كان حقيرا . ومثل العدو مثل النار إن تداركت أولها سهل إطفاؤها ، وان تركت حتى استحكم ضرامها صعب أمرها .

وكان بعض الصحابة رضوان الله عليهم أجمعين ، اذا أراد الغزو لا يقص أظفاره . فأول ما يفعل من أراد اللقاء أن يقدم بين يدى اللقاء عملا صالحا (٤) من صدقة أو صيام(٥) وَرَدّ مظلمة وصلة رحم ، ودعاء مخلص ، وأمر بمعروف ونهى عن منكر وأمثال ذلك . فقد كان عمر بن الخطاب رضى الله عنه يأمر بذلك ويقول : إنما تقاتلون بأعمالكم . وروى أن بريدا ورد عليه بفتح المسلمين قال له عمر : أىّ وقت لقيتم العدو ؟ قال : غدوة . قال متى انهزم ؟ قال : عند الزوال . قال عمر : إنا لله وإنا اليه راجعون ، قام الشرك للايمان (٦) من غدوة إلى الزوال ؟ لقد أحدثتم بعدى حدثا أو أحدث بعدكم حدث(٧) . فالشأن (٥١ب) / كله فى استجادة القواد وانتخاب الأمراء(٨) وأصحاب الألوية ، فلا ينبغى أن يقدم على الجيش إلا الرجل ذو الشجاعة رابط الجأش صادق البأس ممن(٩) توسط الحرب ومارس الرجال ومارسوه ونازل الأقران وقارع الأبطال ، فانه اذا كان كذلك وصدر الكل على رأيه(١٠) ، أى كان جميعهم كأنهم مثله ، فان رأى لقرع الكتائب وجها والا رد الغنم للزربية (١١). واتفق العقلاء على أن الحرب خدعة، فأول ذلك أن يبث جواسيسه(١٢) فى عسكر عدوه يستعلم أخباره ويستعلم رؤساءهم(١٣) وقادتهم وذا(١٤) الشجاعة منهم وتدبيراتهم ويعدهم وعدا جميلا ويقوى أطماعهم أن ينالوا ما عنده من الهبات الفاخرة ويقول لكل من معه : اذا أردت اللقاء فلا تنشب فى حرب وان وثقت(١٥) بشدتك حتى تعرف وجه المهرب منها، فان النفس أقوى شىء اذا وجدت سبيل الحيلة وأضعف شىء اذا يئست منها. ومن الحزم أن يكون حماة الرجال (٥٢أ) وكماة الأبطال فى القلب فانه(١٦) مهما انكسر الجناحان فالعيون ناظرة الى / القلب فاذا كانت راياته

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(١) سورة آل عمران ، ١٥٥ .
(٢) انظر صحيح البخارى ، ٤ : ٧٧ . وصحيح مسلم ، ٥ : ١٤٧ .
(٣) سراج الملوك : يحقر .
(٤) ج و د : صلحا .
(٥) سراج الملوك : وصيام .
(٦) سراج الملوك : قاوم الشرك الا يمان .
(٧) سراج الملوك : أو أحدثت بعدكم حدثا .
(٨) أ : الأمور .
(٩) د : من .
(١٠) ج : على رايتها . سراج الملوك : عن رأيه .
(١١) كل الأصول : للدربية .
(١٢) ج : بث جواسيس . د : يبعث جواسيسه .
(١٣) سراج الملوك : ويستميل قلوب رؤسائهم .
(١٤) ذا : ساقطة من ج .
(١٥) سراج الملوك : اذا وثقت .
(١٦) ب و ج و د : وانه .

الفصل الثامن والعشرون

فى تدبيرات الحرب وحيله[1] فى الجهاد

فأقول وبالله التوفيق : واعلموا أن الناس كما فى ضياء الخلفاء قد وضعوا فى تدبيرات الحروب كتبا ورتبوا فيها ترتيبا قد لا يسع[2] سائر أهل الأقاليم ، إذ لكل أمة فى الغالب نوع من التدبير وصنف من الحيلة[3] وضرب من المكيدة وجنس من اللقاء والكر والفر ، ولكن نَصِف[4] منه أشياء / لا (٥٠ب) تكاد تختلف فى أنها أزمّة الحروب . ونبدأ بما ذكر الله تعالى فى كتابه العزيز فقال سبحانه : « وَأَعِدُّوا لَهُم مَّا اسْتَطَعْتُم مِّن قُوَّةٍ وَمِن رِّبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللهِ وَعَدُوَّكُمْ »[5] فقوله : مَا اسْتَطَعْتُم مِّن قُوَّةٍ ، يشمل كل مقدور البشر من العدة[6] والآلة والحيلة[7] ، لكن فسرها النبى صلى الله عليه وسلم بالرمى لما مر[8] على الناس يرمون فقال ألا إنَّ القوةَ الرَّمْيُ ، ثلاثا[9] . قال[10] ابن العربى فى أحكامه : شاهدت القتال مرارا فلم أرَ فى الآلة أنجع من السهم ولا أسرع منفعة منه[11] .

واعلموا أن الله قد جمع لنا آداب الحرب فى قوله : « يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا لَقِيتُمْ فِئَةً فَاثْبُتُوا وَاذْكُرُوا اللهَ كَثِيرًا لَّعَلَّكُمْ تُفْلِحُونَ وَأَطِيعُوا اللهَ وَرَسُولَهُ وَلَا تَنَازَعُوا فَتَفْشَلُوا وَتَذْهَبَ رِيحُكُمْ وَاصْبِرُوا إِنَّ اللهَ مَعَ الصَّابِرِينَ »[12] . وقوله : « يَا أَيُّهَا الَّذِينَ آمَنُوا إِن تَنصُرُوا اللهَ يَنصُرْكُمْ وَيُثَبِّتْ أَقْدَامَكُمْ »[13] . فتبين لنا علة النصر والهزيمة ، وأن الفرار علة[14] (٥١أ) المعاصى[15] بقوله تعالى[16] : « إِنَّ الَّذِينَ تَوَلَّوْا مِنكُمْ يَوْمَ الْتَقَى / الْجَمْعَانِ إِنَّمَا

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(١) أ و ج : وحيلة .

(٢) ب : يمنع . ج و د : يسع . . ما أثبتناه عن ١ وسراج الملوك .

(٣) ج : من التدبير ومن الحيلة .

(٤) ج : أصف . د : فصنف .

(٥) سورة الانفال ، ٦٠ .

(٦) أ و ج : العدة .

(٧) أ : والحلية .

(٨) لما مر : ساقطة من ج .

(٩) انظر صحيح مسلم ، ١٣ : ٦٤ .

(١٠) ب : وقال .

(١١) ابن العربى ، أحكام القرآن ، ٢ : ٨٦٢ .

(١٢) سورة الانفال ، ٤٥ و ٤٦ .

(١٣) سورة محمد ، ٧ .

(١٤) ب : علته .

(١٥) انظر تفسير البيضاوى ، ٧٤ فالمعنى مأخوذ منه .

(١٦) تعالى : ليس فى أ و ب .

الفصل السابع والعشرون

فى حكم قبول إسلام الكفار[1] وأخذ الجزية منهم

اذا كانوا بمحل يؤمن[2] غدرهم

فأقول وبالله التوفيق : قال الخرشى فى شرح المختصر عند قول المصنف: ودُعُوا للاسلام ثم جزية بمحل يؤمَنُ غدرهم : متعلق بدُعوا أو بالاسلام ثم جزية ، أى لايدْعَوْن[3] إلا فى محل آمن ، ولا يكَفّ عنهم اذا أجابوا للاسلام أو للجزية الا أن يكونوا بمحل يؤمن[4] غدرهم[5] . وقال عبد الباقى فى هذا المحل : يحتمل تعلقه بدعوا أو بجزية أو بهما ، قاله تت ، والا بأن لم يجيبوا للجزية أو أجابوا بها لكن بمحل لا تنالهم فيه أحكامنا ولم يرتحلوا الى بلادنا أو خيف من دعوتهم الى الاسلام[6] أو الجزية أن يعاجلونا بالقتال أخذ فى قتالهم[7] . وقال الشبرخيتى فى هذا المحل : وهو متعلق بدُعوا أو بالاسلام /(٥٠ أ) والجزية أى لاَ يُدْعَون[8] الا فى محل يؤمن[9] والا مُنعت الدعوة ولا يُكف عنهم اذا أجابوا للاسلام أو الجزية الا أن يكونوا بمحل يؤمن غدرهم .

وهذا فى الجزية العَنوية، وأما الصلحية فلا يعتبر فيها ذلك[10] . وفى الجامع شرح المختصر فى هذا المحل : أى دُعوا للاسلام بمحل يؤمن[11] وأما فى المحل الذى لا يؤمن فلا . ويحتمل ثم جزية بمحل يؤمن(٥) والا فلا ، ويحتمل أن يرجع اليهما. انتهى . وفى الزهرات الوردية: وقول صاحب المختصر: بمحل يؤمن، أى، أنه لابد أن يكون الكفار بمحل مأمون[12]، والمراد بكونه مأمونا أن تنالهم أحكامنا فيه وسواء كان قريبا أو بعيدا كما فى الجواهر والرسالة[13] . انتهى .

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(١) ب : الاسلام للكفار . ج : فى حكم قبل الاسلام .

(٢) ب : لا يؤمن .

(٣) الخرشى : لا يدعوا .

(٤) ج : بمحل أمن يؤمن .

(٥) الخرشى : غوائلهم . الخرشى ، ٣ : ١١٠

(٦) د : إسلام .

(٧) عبد الباقى ، ٣ : ١٤١ .

(٨) الشبرخيتى : لا يدعوا .

(٩) ب : يؤمن غدرهم .

(١٠) ج : بذلك . الشبرخيتى ، ٣ : ورقة ٦٥ ظهر .

(١١) ..... (٥) ساقطة من ب .

(١٢) أ : يؤمن .

(١٣) عبد المعال ، الزهرات الوردية ، ١ : ورقة ٢١٣ وجه .

والممنوعة اذا كان المسلمون (١) قلة ويخشى بالدعوة على المسلمين ، ولا شك في إسقاطها اذا عاجلونا(٢) . انتهى . وقال الخرشي : ومحل الدعوة مالم يعاجلونا بالقتال (٣) والا قوتلوا من غير دعوة لأنها حينئذ حرام(٤) وفى الزهرات الوردية : ثم إنهم اذا دعوا للاسلام وأجابوا له ، فانهم لا يقاتلون كما فى النقل وان كان ظاهر الرسالة(٥) أنه لا بد فى ترك قتالهم من إسلامهم بالفعل أو أداء الجزية ولا يكتفى فى ذلك بالاجابة (٤٩ب) للاسلام (٦) . انتهى . /

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(١) أ و ب و د : فالمسلمين . الزهرات الوردية : فى المسلمين وما أثبتناه عن ج .
(٢) عبد المعالى ، الزهرات الوردية ، ١ : ورقة ٢٣٠ وجه .
(٣) الخرشي : بالقتل .
(٤) الخرشي ، ٣ : ١٤٠ .
(٥) انظر ابن أبى زيد القيروانى : الرسالة ، ٩٧ .
(٦) عبد المعالى ، الزهرات الوردية ، ١ : ورقة ٢٣٠ وجه .

الفصل السادس والعشرون

في حكم دعوة الكفار إلى الاسلام قبل القتال

فأقول وبالله التوفيق : إن دعوة الكفار الى الاسلام قبل القتال واجبة ، وفى صحيح البخارى ، أن (٤٨ب) النبى صلى / الله عليه وسلم لما أعطى عليا الراية يوم خيبر قال له على : يارسول الله أقاتلهم حتى يكونوا مثلنا ؟ فقال : انفذ على رسلك حتى تنزل بساحتهم ثم ادعهم الى الاسلام فأخبرهم بما يجب عليهم من حق الله فيه ، فوالله لأن يهدى الله بك رجلا واحدا خير من أن يكون لك حمر النعم[1] . وفى المختصر : وَدُعُوا للاسلام ، ثم جزية [2] . قال عبد الباقى فى شرح المختصر فى هذا المحل : بلغتهم الدعوة أم لا[3] . وقال ابن جزى فى القوانين : الدعوة قبل القتال مختصة بمن لم تبلغهم دعوة الاسلام فيُدعون اليه أولا ، وان أجابوا كُفَّ عنهم ، وان أبوا عرض[4] عليهم الجزية فان أبوا قوتلوا[5] ، وأما من بلغتهم[6] فلا يُدعون وتُلتمس[7] غرتهم[8] . وفى الزهرات الوردية : واختلف أهل المذهب فى تقدم الدعوة على القتال ، ومنهم من رأى أن المذهب على ثلاثة أقوال[9] : الوجوب ، وعدمه ، والوجوب فى حق من بعدت داره .

(٤٩أ) ومنهم من زاد رابعا وهو إن كان جيش المسلمين كثيرا آمنا ، والا فلا . / والدعوة أن يدعوا أولا الى الاسلام فان أجابوا فلا كلام ، وان لم يجيبوا دعوا الى الجزية فان أجابوا لم يقاتلوا[10] وان امتنعوا قوتلوا[11] . قال اللخمى : واتفق على وجوبها فى حق من[12] لم تبلغه وهى فى حق من (٠) بلغته على أربعة أوجه : واجبة ، ومستحبة ، ومباحة ، وممنوعة . فالواجبة اذا غلب على ظننا أنهم اذا دعوا أجابوا وكان جيش الكفار لا طاقة لهم بالمسلمين . والمستحبة اذا شك هل يجيبون[13] أو لا . والمباحة اذا علم أنهم لايجيبون.

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(١) صحيح البخارى ، ٥ : ١٧١ .
(٢) المختصر ، ١١١ .
(٣) عبد الباقى ، ٣ : ١٤٠ .
(٤) القوانين : فرضت .
(٥) د : قاتلوا .
(٦) أ : بلغته . ج : بلغتهم الدعوة .
(٧) أ و ج والقوانين : تلتمس .
(٨) ابن جزى ، القوانين ، ١٤٥ .
(٩) الزهرات الوردية : أقسام .
(١٠) ج ود : لم يقتلوا
(١١) ج : قاتلوا .
(١٢) .... (٠) ساقطة من د .
(١٣) يجيبوا : فى كل الأصول ، وما أثبتناه من الزهرات الوردية .

الفصل الخامس والعشرون

فى حكم إعطاء الراية لأمير الجيش فى الجهاد

فأقول وبالله التوفيق : إن إعطاء الراية لأمير الجيش فى الجهاد سنة ، لأنه عليه الصلاة والسلام كان (١) يفعل ذلك ، كما ورد فى صحيح البخارى عن أبى سهل بن سعد أن رسول الله صلى الله عليه وسلم قال : لأُعطيَنَّ الراية غدا رجلا يفتح الله على يديه . فبات الناس يدوكون (٢) ليلتهم أيهم يُعطاها ، فلما أصبح الناس غَدَوْا على رسول الله صلى الله عليه وسلم ، كلهم يرجو (٣) أن يعطاها . فقال : أين على بن أبى (٤٨ أ) طالب(٤) ؟ فقالوا : يشتكى عينه يارسول الله (٥) . قال فأرسلوا / اليه ، فأتى به ، فلما جاء بصق فى عينيه ودعا له فبرأ حتى كأن لم يكن به وجع ، فأعطاه الراية (٦) . وفى صحيح البخارى(٧) أيضا عن سلمة بن الأكوع(٨) قال : كان على (٩) تخلف عن النبى صلى الله عليه وسلم فى خيبر وكان به رمد فقال : أنا أتخلف عن رسول الله صلى الله عليه وسلم ؟ فخرج علىٌّ فلحق بالنبى صلى الله عليه وسلم . فلما كان مساء الليلة التى فتحها فى صباحها قال رسول الله صلى الله عليه وسلم : لأُعطيَنَّ الراية ، أو ليأخذَنَّ غدا رجل يحبه الله ورسوله أو قال يحب اللهَ ورسولَه ، يفتح الله عليه . فاذا نحن بعلى وما نرجوه . فقالوا : هذا على فأعطاه رسول الله صلى الله عليه وسلم . ففتح الله علينا(١٠) . وفى صحيح البخارى أيضا عن نافع ابن جبير قال : سمعت العباس يقول للزبير : ها هنا أمرك رسول الله صلى الله عليه وسلم أن تركز الراية ؟ فقال : نعم(١١) . انتهى .

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(١) ب : كما .
(٢) أ : يتدركون . وفى النهاية لابن الأثير : دَوْكة ودُوكة : خوض واختلاط . والمعنى أن الناس باتوا يخوضون ويموجون، فيمن يدفع الرسول الراية اليه (المحقق) .
(٣) أ : يرجو كلهم . ج ود : كلهم يرجون . وما أثبتناه من ب والبخارى .
(٤) أ و د : أين ابن أبى طالب
(٥) صلى الله عليه وسلم : زيادة فى ج .
(٦) صحيح البخارى ، ٥ : ١٧١ .
(٧) ب : وفى البخارى .
(٨) رضى الله عنه : زيادة فى البخارى .
(٩) رضى الله عنه : زيادة فى البخارى .
(١٠) البخارى : عليه . صحيح البخارى ، ٤ : ٦٥ .
(١١) المرجع السابق . والحديث فى البخارى جاء فى غير صيغة السؤال ولا توجد به العبارة و قال نعم .

الفصل الرابع والعشرون

فى حكم تعليق الأجراس والأوتار فى أعناق الدواب فى الجهاد

فأقول وبالله التوفيق : اعلم أن تعليق الأجراس والأوتار فى أعناق الدواب مكروه وفى الجامع لخليل بن إسحاق (١) : ويكره تعليق الأجراس والأوتار (٢) فى أعناق الدواب . وقال ابن جزى فى القوانين : لا يجوز شد الأوتار (٥) على الدواب ولا تعليق الأجراس عليها ، للنهى عن ذلك فى الحديث وهى الجلاجل الكبار بخلاف الصغار ، وكلما عظم الجرس كان أشد لشبهه بالناقوس ، وقيل لأنه يعلم العدو بنا فيقصدنا إن كان طالبا أو يبعد إن كان هاربا (٣) . وفى صحيح البخارى(٤) فى باب ما قيل فى الجرس ونحوه عن عبد الله بن أبى بكر عن عباد بن تميم أن أبا بشير الأنصارى أخبره أنه كان مع رسول الله صلى الله عليه وسلم فى بعض أسفاره — قال عبد الله حسبت أنه قال والناس فى مبيتهم — فأرسل رسول (٤٧ب) الله صلى الله عليه وسلم / رسولا : لا يبقين فى رقبة بعير قلادة من وتر أو قلادة الا قطعت (٥) .

قال القسطلانى فى الأرشاد فى هذا المحل : كذا وهو بلفظ «أو» — للشك أو للتنويع — والنهى للتنزيه . . . والمطابقة (٦) من جهة أن الجرس لا يعلق فى أعناق الابل الا بعلاقة وهى الوتر ونحوه فذكر المؤلف الجرس الذى يعلق بالعلاقة . فاذا ورد النهى عن تعليق القلائد فى أعناق الابل دخل فيه النهى عن الجرس ضرورة ، والأصل هو النهى عن الجرس (٧) . انتهى .

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(١) أ و ج و د : الجامع الخليل بن اسحاق .

(٢) . . . . (٥) ساقطة من د .

(٣) ابن جزى ، القوانين ، ١٠٥ .

(٤) أ : الصحيح البخارى .

(٥) صحيح البخارى ، ٤ : ٧١ .

(٦) معنى المطابقة : المناسبة بين ذكر الحديث وعنوان الباب الذى من أجله ذكر الحديث . وهو هنا « باب ما قيل فى الجرس ونحوه » .

(٧) القسطلانى ، إرشاد السارى لشرح صحيح البخارى ، ٥ : ١٤٠ .

والكعبين ، وكذا الخف لأنه يغيظ الكفار . . . ولا يجوز تحلية شيء مما ذكر بالذهب[1] . انتهى . قلت: (٤٧ أ) / قد تقدم أن السيف يحلى بالذهب في مشهور مذهبنا [2] وفي الحاق سائر آلات الحرب به[3] قولان بالمنع والجواز والمشهور المنع . انتهى .

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(١) القسطلاني ، إرشاد الساري لشرح صحيح البخاري ، ٥ : ٩٨ .

(٢) د : المشهور مذهبنا .

(٣) به : ساقطة من ج و د .

الفصل الثالث والعشرون

فى حكم تحلية آلات الحرب بالذهب والفضة في الجهاد

فأقول وبالله التوفيق : إن تحلية آلات الحرب غير السيف[1] بالذهب والفضة محرمة فى مشهور المذهب ولو فى الجهاد. وفى المختصر : وحرم استعمالُ ذكرٍ محلىً ، ولو منطقة ، وآلة حرب [2]. قال الخرشى فى هذا المحل : أى يحرم[3] تحلية المنطقة . . . وآلة الحرب على المشهور ، سواء كان ما يُتَّقَى به كالترس أو يضارب به كالرمح والسكين أو يركب به كالسرج والركاب ، أو يستعان به على الفرس كاللجام[4] . وقال عند قوله : الا المصحف والسيف : أى . . . يجوز استعمال السيف المحلى بالذهب والفضة سواء اتصلت الحلية كقبضته أو انفصلت كغمده لورود السنة بالجواز لا لأنه أعظم (٤٦ب) آلات الحرب[5] . وفى الجامع شرح المختصر فى هذا المحل : يجوز أن / يحلى السيف بالذهب والفضة إرهابا للكفار . وقال ابن جزى فى القوانين فى بيان ما يجوز من الحلى : أما للنساء[6] فيجوز مطلقا ، وأما للرجال[7] فتحلية [8] السيف بالفضة اتفاقا ،وفى تحليته [9] بالذهب قولان ، وفى إلحاق سائر آلات الحرب بالسيف قولان[10]. وفى صحيح البخارى فى باب تحلية السيوف عن أبى أمامة: لقد فتح الفتوح قوم ما كانت حلية سيوفهم الذهب والفضة[11] إنما كانت حليتهم العَلَابى والآنُك[12] والحديد[13] قال القسطلانى فى الارشاد فى هذا المحل : ولا يلزم من كون حلية سيوفهم ماذكر : عدم جواز غيره فيجوز للرجل[14] تحلية السيف وغيره من آلات الحرب بالفضة كالرمح وأطراف السهام والدروع والمنطقة والرَّانين بالراء المهملة والنون – خف يلبس الساق [15] ، ليس له قدم بل يكون ما[16] بين الركبة

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(١) ب : غير السيوف . غير السيف : ساقطة من د .

(٢) المختصر ، ٧ .

(٣) الخرشى : فيحرم .

(٤) والمهماز : زيادة فى ج و د .

(٥) الخرشى ، ١ : ٩٨-٩٩ .

(٦) ج : النساء .

(٧) ج : الرجل .

(٨) القوانين : فتجوز تحلية السيف .

(٩) القوانين : تحليتها .

(١٠) ابن جزى ، القوانين ، ١٠٥ .

(١١) ب : ولا الفضة .

(١٢) العلابى هو العصب . والآنك هو الرصاص الابيض ، وقيل الاسود ، وقيل هو الخالص منهما .

(١٣) صحيح البخارى ، ٤ : ٤٧ .

(١٤) ج : الرجال .

(١٥) ج : بالساق .

(١٦) ما : ساقطة من ج و د .

معها (١) . قال الخرشي عند قوله وشد زنار(٢) : ومثله فعل كل شيء مما يختص بزى الكفار ولا بد أن ينضم الى ذلك المشي الى الكنيسة ونحوه ، وقيد (٣) أيضا بما اذا فعله في بلاد الاسلام(٤) . انتهى .

وفي نسيم الرياض شرح الشفاء عند قول المصنف والتزين (٥) بزيهم . أى التحلى بحليتهم والتلبس بها . والزى الهيئة الظاهرة بلباس ونحوه . والزنانير جمع زنار . . . وهو حزام للنصارى يشدونه في أوساطهم (٤٦ أ) . . . وهو أمر يختص بهم ويشترط عليهم ليتميزوا به عن المسلمين وقد / كان ذلك معروفا في الصدر الأول فخبث لبس زى الكفار سواء دخل دار الحرب أو لا وان كان (٦) بنية الرضا بدينهم أو الميل (٧) اليه أو تهاونا بالاسلام كفر ، والا فلا(٨) . انتهى .

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(١) لم نقف على شرح المختصر لابي عبد الله ابن مرزوق .
(٢) المختصر ، ٣٢٢ .
(٣) ج : وقيده أيضا اذا .
(٤) الخرشي ، ٥ : ٣٠٥ .
(٥) ج ود : والتزيي .
(٦) وان كان : ليس في نسيم الرياض .
(٧) د : أو للميل .
(٨) أحمد شهاب الدين الخفاجي ، نسيم الرياض شرح الشفاء ، ٤ : ٥١٢ .

حال [1] ، الثاني : محرم الا فى الحرب ، الثالث : محرم الا فى السفر ،الرابع : محرم الا فى المرض كالحكة ، [2] الخامس : محرم الا فى الغزو ، السادس : مباح بكل حال ، السابع : محرم الا كالعلم[3] ، الثامن : محرم على الرجال والنساء ، التاسع : محرم لبسه دون افتراشه [4] . انتهى .

قلت : فالمشهور[5] المعتمد من هذه الأقوال أن خالص الحرير يحرم على الرجل[6] لبسه ولو فى الجهاد (٤٥ أ) والتحاف به ، والركوب عليه [7] ، والجلوس عليه ولو بحائل كما للمازرى وعياض / الا على سبيل التبع لزوجته . وفى الزهرات الوردية : وللسلف والعلماء خلاف فى الحرير : فقيل حرام على الرجال والنساء ، وقيل مكروه لهما ، وقيل مباح لهما ، والصحيح مذهب [8] مالك وجمهور الفقهاء أنه حلال للنساء وحرام على الرجال[9] . وقال[10] ابن جزى فى القوانين : وأما الرجال فيحرم عليهم الحرير والذهب على الجملة . ثم قال : وأجاز ابن القاسم أن يتخذ منه راية [11] . انتهى .

هذا كله فى ثياب الحرير والذهب أما سائر انواع الثياب فجائزة . قال أحمد الزروق فى شرح الوغليسية : استحب للعالم التجمل وكذا[12] المتعلم لا سيما بالأبيض[13] من الثياب من غير معاداة لسائر الألوان ؛ فقد لبس النبى صلى الله عليه وسلم[14] الأخضر والأحمر[15] والأسود والأصفر الا الأزرق فانه لم يرد فيه نفى ولا اثبات [16] . انتهى .

(٤٥ب) هذا كله مالم يكن لباسا يختص بالكفار كالزنار فان لبسه حرام بل كفر على ظاهر كلام / صاحب المختصر قال أبو عبد الله ابن مرزوق فى شرحه عند قوله ولبس زنار : ظاهر كلام المصنف أن شد الزنار وحده يتضمن الكفر . وظاهر ما فى الشفاء أن ذلك مع المشى الى الكنائس وما فى الشفاء أولى . وقال أيضا : إن دلالة هذا الفعل على الكفر ضعيفة لإمكان إختياره تلك اللبسة لمعنى غير الكفر فلا بد من دليل آخر

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(١) الأحكام : محرم بكل حال .
(٢) كالحكة : ساقطة فى الأحكام .
(٣) الأحكام : محرم الا العلم .
(٤) ابن العربى ، احكام القرآن ، ٤ : ١٦٧٤ .
(٥) ب : المشهور .
(٦) ج ود : الرجال .
(٧) ج : وفى الجهاد والتحل به أو التجارة والركوب عليه .
(٨) الزهرات الوردية : فى مذهب مالك .
(٩) عبد المالك ، الزهرات الوردية ، ١: ورقة ٢٢٣ ظهر .
(١٠) د : قال .
(١١) ابن جزى ، القوانين ، ١٠٥ .
(١٢) شرح الوغليسية : وكذلك .
(١٣) شرح الوغليسية : بالبياض .
(١٤) شرح الوغليسية : عليه الصلاة والسلام .
(١٥) شرح الوغليسية : والمحبر .
(١٦) أحمد الزروق ، شرح الوغليسية ، ورقة ٤ وجه .

الفصل الثاني والعشرون

فى حكم لبس الحرير فى الجهاد

فأقول وبالله التوفيق : إن لبس الحرير للرجال حرام بل كبيرة . قال شهاب الدين أحمد بن حجر الهيتمى فى كتاب الزواجر عن [1] اقتراف الكبائر : الكبيرة السابعة[2] بعد المائة لبس الذكر أو الخنثى . . . الحرير الصرف . أخرج الشيخان وغيرهما عن عمر رضى الله عنه ، قال : قال رسول الله صلى الله عليه وسلم : لا تلبسوا الحرير فانه من لبسه فى الدنيا لم يلبسه فى الآخرة . وأخرج الشيخان أيضا وغيرهما : إنما يلبس الحرير من لا خلاق له . . . وأخرج أبو داوود والنسائى عن على رضى الله عنه رأيت رسول الله صلى الله عليه (٤٤ أ) وسلم أخذ حريرا فجعله فى يمينه وذهبا فجعله فى يساره ثم / قال : إن هذين حرام على ذكور أمتى . . . وأخرج البخارى وأبو داوود ليكونن من أمتى أقوام يستحلون الحرير يمسخ منهم قردة وخنازير الى يوم القيامة . ثم قال : (تنبيه) عد لبس الحرير كبيرة هو الظاهر من أحاديثه[3] الصحيحة السابقة فيه لما فيها من ذلك الوعيد الشديد ، ثم قال : لكن جمهور[4] أئمتنا على أنه صغيرة لعلهم نظروا الى اختصاص الكبيرة بما فيه حد[5] ومر أن الصحيح خلافه فالوجه الذى لا محيد عنه عند النظر الى تلك الأحاديث وحدّها بأنها ما فيه وعيد شديد الجزم بأن ذلك كبيرة وممن اختار ذلك الجلال البلقينى وغيره واليه يميل إمام الحرمين[6]

. هذا كله فى غير الجهاد . وأما لبسه فى الجهاد فحرام أيضا على المشهور ، قال عبد الباقى فى شرح المختصر عند قول المصنف : وعَصَىَ ، وصَحّت ان لبس حريرا :[7] يحرم لبس الحرير . . . لحكة (٤٤ب) أو فى جهاد على المشهور لأنه قول ابن / القاسم وروايته عن مالك خلافا لابن حبيب فى الأول ، ولابن الماجشون فى الثانى ، معللا له بان فيه المباهاة والارهاب فى الحرب وبأنه يقى عند القتال من النبل وغيره عند عدم السلاح . وأجازه فيه جماعة من الصحابة والتابعين ، وقال به عبد الحكم[8] ، وحكاه ابن شعبان عن مالك من رواية عيسى عن ابن القاسم ، واقتصر ابن الجلاب على الجواز فيهما وهو ضعيف[9] انتهى . وقال[10] ابن العربىّ فى الأحكام : وفى الحرير تسعة أقوال : الأول ، محرم على الرجال بكل

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(١) ج : على .
(٢) الخامسة بعد المائة فى كتاب الزواجر (المحقق) .
(٣) أ : الأحاديث .
(٤) ب : الجمهور .
(٥) ج : خالة .
(٦) ابن حجر المكى الهيتمى ، كتاب الزواجر عن اقتراف الكبائر ، ١ : ١٢٤ .
(٧) المختصر ، ٢٥ .
(٨) شرح المختصر لعبد الباقى : ابن عبد الحكم .
(٩) عبد الباقى ، ١ : ٢٢٨ .
(١٠) ب و د : قال .

الفصل الحادي والعشرون

فى حكم ضرب الطبول فى الجهاد إرهابا للكفار

فأقول وبالله التوفيق : إن ضرب الطبول فى الجهاد جائز إن أريد به إرهاب الكفار (١) وتقوية المسلمين . وقال ابن العربى فى الأحكام : والطبل على قسمين : طبل الحرب(٢) . لا حرج به ، لأنه يقيم النفوس ، ويرهب العدو ، وطبل النكاح . . . كالدف . . . يجوز إن كان بما يحسن من الكلام وسلم من الرفث وانكشاف النساء للرجال (٣) . انتهى .

(٤٣أ) وفى ضياء الخلفاء : واذا خرجوا فليضربوا بالطبل فانه يقيم النفوس / ويرهب العدو (٤) .

قلت : ينبغى أن يراعى فى ضربه غرض شرعى(٥) كارادة الاجتماع وإعلام خروج الجيش ونزوله وقدومه ونحو ذلك ، اذ كل ما ليس بسنة يقتصر عليه (٦) على ما تدعو اليه الضرورة كما ضرب الطبل لقدوم عير لِدِحْيَة . وفى تفسير جلال الدين المحلى : كان النبى صلى الله عليه وسلم يخطب يوم الجمعة فقدمت عير وضرب لقدومها الطبل على العادة فخرج لها الناس من المسجد غير اثنى عشر رجلا فنزل (٧) : (وإذا رَأَوْا تِجَارَةً أَوْ لَهْوًا انفَضُّوا إِلَيْهَا (٨)) أى التجارة لأنها مطلوبهم دون اللهو(٩) . انتهى .

قلت : انظر كيف سمى ضرب الطبل لهوا مع أنه ضرب لغرض شرعى لكونه ليس من الحق فى ذاته وكيف لما يفعله الجهال من ضرب آلات اللهو والغناء ! وهذا مما لا يختلف فيه اثنان أنه من الباطل وليس من الحق. وماذا بعد الحق الا الضلال ؟ وفى المدخل : قال ابن القاسم(١٠) سألت مالكا عن الغناء فقال: قال الله (٤٣ب) تعالى: (فَمَاذَا بَعْدَ الْحَقِّ إِلَّا الضَّلَالُ(١١)) أفحق هو(١٢) ؟ وفى المعيار : وما ينهاه / الوالى فى رعيته آلات اللهو . وفيه أيضا بعد هذا الكلام بقليل : ولا يجوز الغناء على كل حال فى عرس ولا غيره . وقد كتب عمر بن عبد العزيز الى البلدان أن يقطع اللهو كله الا الدف وحده فى العرس ، وقال يحيى : وبهذا آخذ (١٣) . انتهى .

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(١) د : إرهابا للكفار .

(٢) ج : حرب . الأحكام : طبل حرب . . . . فلا حرج فيه .

(٣) ابن العربى ، احكام القرآن ، ٣ : ١٤٨٢ .

(٤) لم نجد هذه العبارة فى سراج الملوك .

(٥) ج ود : غرض له شرعى .

(٦) د : فيه .

(٧) ج : فنزل الآية .

(٨) سورة الجمعة ، ١١ .

(٩) تفسير الجلالين ، ٢ : ٢٤٠ .

(١٠) المدخل : ابن القاسم بن محمد .

(١١) سورة يونس ، ٣٢ .

(١٢) ابن الحاج ، المدخل ، ٣ : ١١٨ .

السلام حين رأوه فلما أدركه قال عليه السلام : لم جئت؟ قال جئت لأتبعك [1] أو أصيب[2] معك . فقال عليه السلام : تؤمن بالله ورسوله ؟ قال : لا . قال : فارجع ، فلن أستعين بمشرك . ثم أدركه بالشجر[3] فقال له كما قال له أول مرة فرجع ثم قال له في الثالثة: تؤمن بالله ورسوله ؟ قال : نعم. قال له : انطلق[4]. انتهى .

ومقتضى[5] الاستدلال بغزو صفوان بن أمية معه عليه الصلاة والسلام حنينا والطائف أن غزوه معه (٤٢ب) فيهما كان قبل إسلامه. وهل سكوته في إعانتهم بمنزلة/ إذنه في أعانتهم أم لا ؟ وهو ظاهر واقعة صفوان المتقدمة . ولو عبر المصنف « بكتابي » بدل مشرك لكان أولى لأنه هو الذي فيه الخلاف بين مالك وأبي حنيفة . وأما المشرك غير الكتابي فلا يستعان به باتفاقهما[6] . انتهى . وقال عبد الباقي : أجاب بعض الأصحاب[7] بأن النهي كان في وقت خاص وهو بدر بدليل غزو صفوان معه في حنين والطائف[8] انتهى .

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(١) صحيح سلم : لأتبعك وأصيب .
(٢) الشبرخيتي : لأصيب .
(٣) صحيح سلم : بالشجرة .
(٤) صحيح سلم ، ٢ : ١٩٨ (باختلاف في الرواية) .
(٥) ب : ستهى .
(٦) الشبرخيتي ، ٢ : ورقة ٦٦ ظهر
(٧) ب : الصحابة .
(٨) عبد الباقي ، ٣ : ١٤٤ .

الفصـــل العشرون

فيمن يستعان به فى الجهاد

فأقول وبالله التوفيق ، قال ابن جزى فى القوانين : والأصل فيه الأحرار المسلمون (١) البالغون ويجوز بالعبد باذن سيده والمراهقين (٢) الأقوياء ، ولا يجوز بالمشركين خلافا لهما ، يعنى الشافعى وأبا حنيفة . قال ابن حبيب : هذا فى الصف والزحف أما فى الهدم فلا بأس . وقال (٣) : لا بأس أن يقوم بمن سالمه على من حاربه (٤) . وقال فى المختصر : وحُرِّمَ نَبْلٌ سُمٌ واستعانةٌ بمشرك إلا لخدمة (٥) . قال الخرشى عند قول المصنف واستعانة بمشرك الا لخدمة : يعنى أنه يحرم علينا أن نستعين بكافر فى الجهاد الا أن يكون (٤١ب) خادما لنا فى / حفر أو هدم (٦) أو رمى منجنيق وما أشبه ذلك، والسين للطلب . والممنوع طلب إعانتهم وحينئذ فمن خرج من تلقاء نفسه لا تحرم علينا معاونته وهو سماع (٧) يحيى خلافا لأصبغ والمراد بالمشرك : الكافر (٨) . وقال الشبرخيتى عند قول المصنف واستعانة بمشرك : السين للتأكيد فيحرم علينا قبول إعانته وهذا ما عند أصبغ واستظهره فى الحاشية وهو مخالف لظاهر ما فى سماع يحيى من أن الممنوع طلب إعانتهم وأما من خرج من تلقاء نفسه فلا تحرم علينا معاونته . وعليه فالسين للطلب ، وهو الذى قرر به الزرقانى كلام المصنف وظاهر ابن رشد ترجيحه. قال (٩) فى الشرح : فبقاء السين على بابها (١٠) هو (٤٢أ) المطابق لما فى السماع الذى يفيد (١١) / كلام ابن رشد ترجيحه . وما (١٢) فى السماع يدل له غزو صفوان بن أمية مع النبى صلى الله عليه وسلم حُنينا والطائف وما لأصبغ يدل له خبر مسلم : خرج (١٣) عليه السلام قبل بدر فلما كان بحرَّة الوَبْرة أدركه رجل قد كان يدرك (١٤) منه جرأة ونجدة ففرح أصحابه عليه

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(١) ب : للمسلمين .
(٢) القوانين : وبالمراهقين .
(٣) القوانين : قال .
(٤) ابن جزى ، القوانين ، ١٤٥ .
(٥) المختصر ، ١١٢ .
(٦) الخرشى : هدم أو حفر .
(٧) الخرشى : ظاهر سماع .
(٨) الخرشى ، ٢ : ٤١٢ .
(٩) ب : قال الأجهورى .
(١٠) الشبرخيتى : فيقال السين على حالها .
(١١) أ و ب و د : يفيده .
(١٢) ب : وأما .
(١٣) الشبرخيتى : خروجه .
(١٤) ج و د : يدركه . صحيح مسلم : يذكر منه .

إبراهيم وهم الذين تسميهم أهل هذه البلاد الإفرنج . والترك جيل[١] لا كتاب لهم . ولا يفهم من كلامه أن جواز القتال مقصور على هذين الصنفين كما ظن الشارح لأنهما ليسا مفهوم شرط[٢] ولأنه إنما نص على هذين الفريقين لقوتهما ، فغيرهما يقاتل أيضا اذا أبى الاسلام كضعفاء الكفار من القبط والحبشة لأنهم (٤١ أ) لسفالتهم[٣] يميلون للرضا بالذل والصغار والأمن غالب على المسلمين منهم[٤] / انتهى . وقال الخرشي والشبرخيتي بعد ايرادهما هذا الكلام : وبهذا يندفع قول الشارح مفهومه ان قتال غيرهم من القبط والحبشة لا يجوز . والمشهور جوازه[٥] . انتهى .

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(١) ب : جيل قبيلة . شرح عبد الباقي : جيل من الناس .

(٢) المفهوم في أصول الفقه هو ما يقابل المنطوق وفيه خلاف بين العلماء في الأخذ به . ومثاله قوله تعالى : (الحر بالحر) فجمهور العلماء على أن الحر لا يقتل بالعبد أخذا بالمفهوم الذي قابل المنطوق وهو قتل الحر بالحر .

(٣) د : لسفاهتهم .

(٤) عبد الباقي ٣ : ١٥١ .

(٥) الخرشي ، ٢ : ٤١٨ . (معنى لا نصا) وانظر الشبرخيتي ، ٢ : ورقة ٦٩ ظهر . (معنى لا نصا أيضا) .

اللخمي أنه يقتل . وأما الشيخ الكبير الفاني(١) فلا يقتل إلا أن يعلم أنه ممن له الرأي والتدبير على المسلمين . وأما الزمنى كالمقعد والأعرج والأشل الذين لا رأي لهم ولا تدبير . . . فلا يقتلون . وكذلك لا يقتل الأعمى (٤٠ أ) الا أن يعلم أنه ممن له رأي وتدبير على / المسلمين وكذلك لا يقتل الراهب المنعزل في دير أو صومعة الا أن يكون ذا رأي وتدبير على المسلمين . وأما رهبان(٢) الكنائس فيقتلون من غير تفصيل وألحق مالك في العتبية الراهبات بالراهبين(٣) وقال : إنهن أحق بذلك(٤) . انتهى .

قلت : وكفار السودان كغيرهم في جميع الأحكام كما قال أحمد بابا في كتاب الكشف والبيان لأصناف مجلوب السودان(٥). وقال عبد الباقي في شرح المختصر عند قول المصنف وجاز قتال روم وترك:(٦) أي أذن فيصدق بوجوبه (٧) وفي نسخة «نوب» بدل «روم» يراد بهم الحبشة وإن كانت النوب غيرهم في الأصل وهي(٨) صواب كما في ح. قال تت : (٩) ويكون المصنف قصد بها(١٠) الاشارة الى أن حديثي اتركوا الحبشة حيثما تركوكم واتركوا الترك ما تركوكم ليس معمولا بهما على ظاهرهما عن وجوب الترك (٤٠ب) وحرمة القتال . / وإنما المراد(١١) بالنهي فيه(١٢) إرشادي(١٣) فقط فلا ينافي الجواز ، فلهذا نص عليه ، وإنّ قتال غيرهم في ذلك الزمان كان أولى . أو لم يتصحح عند الامام(١٤) تلك الآثار . واما الروم فلم(١٥) يَرِدِ النهي عن قتالهم حتى يعتني بالرد عليه ، وهم(١٦) من أولاد روم بن عيص(١٧) بن إسحاق بن

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(١) ب و الزهرات الوردية : الشيخ الفاني

(٢) ب : راهبات .

(٣) ج : والراهبين . الزهرات الوردية : بالرهبان .

(٤) عبد المالك ، الزهرات الوردية ، ١ : ورقة ٢٢٩ وجه .

(٥) الكشف والبيان ، الورقة الثانية ظهر . «وكفار السودان كغيرهم في ذلك من سائر الكفار» .

(٦) المختصر ، ١١٣ .

(٧) الجائز هو مستوى الطرفين فعلا وتركا . فاذا فسر بأنه مأذون فيه صار صادقا على الجائز وعلى الواجب لأن كلا منهما مشروع ، لذا يتسع للواجب الذي لا بد منه .

(٨) ج : وهو . شرح عبد الباقي : وهي صواب كما في غ خلافا لتت .

(٩) ب : كما في حطابي شرح خليل . د : كما في قال تت . والحطاب هو محمد بن حسن الرعيني المغربي . شرح المختصر وتوفي سنة ٩٠٣ هـ . انظر نيل الابتهاج لاحمد باب ، ٢٣٧ . أما تت فهو رمز الشيخ محمد ابراهيم بن خليل المعروف بالتتائي المالكي من شراح مختصر خليل توفي سنة ٩٤٢ هـ . انظر نيل الابتهاج لاحمد باب ، ٣٣٥ .

(١٠) شرح عبد الباقي : بها الاصلاح والاشارة .

(١١) ب : المراد بهم بالنهي .

(١٢) شرح عبد الباقي : فيهما .

(١٣) هذا عكس ما في مذكرة (٧) اعلاه . إذ النهي يراد به في الأصل الترك على سبيل الوجوب وقد يراد الترك على سبيل الارشاد كما هنا ، فيدخل فيه الترك على سبيل الجواز .

(١٤) شرح عبد الباقي : الامام مالك .

(١٥) ج و د : لم .

(١٦) شرح عبد الباقي : وهو .

(١٧) شرح عبد الباقي : الروم بن عيصو .

الفصل التاسع عشر

فيمن يقاتَل في الجهاد

(٣٩أ) فأقول وبالله التوفيق : إن من يقاتَل في سبيل الله ثلاثة أصناف : الكفار بالأصالة / أو بالارتداد[١] والبغاة والمحاربون ، وسيأتي الفرق إن شاء الله في قتال هؤلاء . قال ابن جزى في القوانين : هم ثلاثة أصناف ، الكفار والبغاة والمحاربون . . . وأما الكفار[٢] فجميع أصنافهم . . . ولا يقتل النساء ولا الصبيان اتفاقا . . . ولا أهل الصوامع ولا الشيخ الفاني ، خلافا للشافعية ، إلا أن يخاف منهم أذىً أو[٣] تدبير ولا يقتل المعتوه ولا الأعمى[٤] والزَّمِن . واختلف إذا كانا ذوى تدبير[٥] . وفي المختصر في استثناء من ذكر : الا المرأة ، الا في مقاتلتها ، والصبى والمعتوه ، كشيخ فانٍ ، وزَمِنٍ ، وأعمى وراهب منعزل بدير أو صومعة بلا رأى . وتُرِك لهم الكفاية فقط ، واستغفر قاتلهمُ ، كمن لم تبلغهم[٦] دعوة[٧] ، وان حيزوا فقيمتهم[٨] . والراهب والراهبة حُرَّان[٩] . وفي الزهرات الوردية : وجميع الكفار يقتلون[١٠] إلا سبعة : المرأة ، والصبى ، والمجنون ، والشيخ الفاني ، والزَّمِنُ ، والأعمى ، والراهب المنعزل بدير (٣٩ب) أو صومعة / فأما المرأة فانها لا تقتل اذا لم تقاتل فان قاتلت ، فقال ابن القاسم في الموَّازيَّة والعتبية : تقتل . وأما الصبى فله حالتان : إحداهما[١١] ألا يشك في أنه صبى فلا يقتل ، وظاهر كلامهم وإن قاتل . الثانية إن شُكَّ فيه ، فالحكم[١٢] أن يكشف عن مئزره[١٣] فيقتل إن نبت[١٤] شعر عانته ككونه ممن جرت[١٥] عليه الموسى ، والمراهق كالمرأة إن قاتل بالسيف وشبهه قتل ، وإن رمى بالحجارة لم يقتل إلا أنْ يقتل فيقتل بذلك[١٦] . وأما المجنون فان كان مُطْبِقاً لم يقتل ، وإن كان يفيق أحيانا فظاهر كلام

(١) د : وبالا رتداد .
(٢) ب : الكافر .
(٣) د : و .
(٤) ج : أعمى .
(٥) ابن جزى ، القوانين ، ١٤٥ .
(٦) المختصر : تبلغه .
(٧) ج : الدعوة .
(٨) يدفع القاتل هذه القيمة للامام ليجعلها في الغنيمة (المحقق) انظر الخرشى ، ٢ : ٤١١ .
(٩) المختصر ، ١١١ .
(١٠) ج والزهرات الوردية : يقاتلون .
(١١) ج و د : أحدهما .
(١٢) الزهرات الوردية : والحكم .
(١٣) ب : مئزرة . ج : يكشف مئزره . د : على مئزره .
(١٤) الزهرات الوردية : أنبت .
(١٥) ب : ككونه تشبيه في عدم القتل من جرت .
(١٦) ج و د : الا أن يقتل بذلك .

(وَقَاتِلُوا الْمُشْرِكِينَ كَافَّةً) اختلف(١) العلماء في تحريم القتال في الأشهر الحرم(٢). فقال قوم: (٣٨ب) كان كبيرا حراما ثم نسخ بقوله : (وَقَاتِلُوا الْمُشْرِكِينَ كَافَّةً) / يعني في الأشهر الحرم (٢) وغيرها ، وهو (٣) قول قتادة وعطاء الخراساني(٤) والزهري وسفيان الثوري ، قالوا : لأنَّ النبي صلى الله عليه وسلم غزا هوازن بحُنين وثقيفا بالطائف وحاصرهم في شوال وبعض ذي القعدة ، وقال آخرون : إنه غير منسوخ (٥) .

قلت: ومحل هذا الخلاف إذا لم يكن الكافرون يعتدون على المسلمين بالقتال فيها ، والا فلا خلاف أنهم يقاتلون فيها ، لقوله (٦) تعالى(٧) : (فَمَنِ اعْتَدَى عَلَيْكُمْ (٨)) بالقتال في الحرم(٩) أو الإحرام(١٠) أو الشهر الحرام : (فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ(١١)) كما في التكملة تفسير عبد الرحمن السيوطي ، ولقوله تعالى (٥) أيضا: (الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ(١٢)) فكما قاتلوكم فيه قاتلوهم(١٣) في مثله ردا(١٤) لاستعظام المسلمين ذلك(١٥) ، كما في التفسير (١٦) المذكور .

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(١) الخازن : واختلف .
(٢) ب : الحرام .
(٣) الخازن : وفي غيرهن وهذا .
(٤) ج : الخرشي .
(٥) تفسير الخازن ، ٢ : ٢٢٢ .
(٦) لقوله تعالى : ليس في ب .
(٧) .... (٥) ساقطة من د .
(٨) سورة البقرة ، ١٩٤ .
(٩) أ و ب و د : الحرام .
(١٠) ب : والحرام .
(١١) تفسير الجلالين ، ١ : ٣٠ .
(١٢) سورة البقرة ، ١٩٤ .
(١٣) الجلالين : فاقتلوهم .
(١٤) أ و ب والجلالين : رد .
(١٥) تفسير الجلالين ، ١ : ٣٠ .
(١٦) ب : تفسير . د : التكملة التفسير المذكور .

الفصل الثامن عشر

فى حكم القتال فى الأشهر الحرم وهى ذو القعدة وذو الحجة والمحرم ورجب

فأقول وبالله التوفيق : إن[1] القتال فيها محرم فى أول الاسلام بنص كتاب الله عز وجل ، قال تعالى : (يَسْأَلُونَكَ عَنِ الشَّهْرِ الْحَرَامِ قِتَالٍ فِيهِ قُلْ قِتَالٌ فِيهِ كَبِيرٌ[2]) فالذى عليه الجمهور كما قال المفسرون أن تحريم القتال فى هذه الأشهر الحرم[3] منسوخ بقوله تعالى :(فَاقْتُلُوا الْمُشْرِكِينَ (١٣٨ أ) [4] حَيْثُ وَجَدْتُمُوهُمْ [5]) وقوله تعالى : (وَقَاتِلُوا / الْمُشْرِكِينَ (٥) كَافَّةً [6]) أى جميعا فى كل الشهور[7]. كما فى التكملة تفسير عبد الرحمن السيوطى. وفى تفسير الخازن: واختلف[8] العلماء فى حكم هذه الآية على قولين : أحدهما أنها محكمة وأنه لا يجوز الغزو فى الأشهر الحرم[9] الا أن يُقاتَلوا فيها فيُقاتِلوا على سبيل الدفع ، رُوى عن عطاء أنه كان يحلف بالله ما يحل للناس أن يغزوا فى الشهر [10] الحرام[11] الا أن يُقَاتَلوا فيه[12] وما نسخت. والقول الثانى الذى[13] عليه جمهور العلماء وهو الصحيح أنها منسوخة . قال سعيد بن المسيب وسليمان بن يسار : القتال جائز فى الشهر الحرام وهذه الآية منسوخة بقوله : (فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ) وبقوله : (وَقَاتِلُوا الْمُشْرِكِينَ كَافَّةً) يعنى فى الاشهر الحرم[14] وغيرها[15]. وفى تفسير الخازن أيضا عند قوله تعالى:

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(١) ان : ليس فى د .
(٢) سورة البقرة ، ٢١٧ .
(٣) ج : الحرام .
(٤) .... (٥) ساقطة من د .
(٥) سورة التوبة ، ٥ .
(٦) سورة التوبة ، ٣٦ .
(٧) تفسير الجلالين ، ١ : ١٦٨ .
(٨) أ و ب و د : اختلف ، وما أثبتناه عن ج والخازن .
(٩) د : الحرام . الخازن : فى الشهر الحرام الا أن يقاتلوا فيه .
(١٠) ب : أشهر .
(١١) د : الأشهر الحرم .
(١٢) الخازن : ولا ان يقاتلوا فيه .
(١٣) الذى : ساقطة من أ .
(١٤) ب و ج : الأشهر الحرام .
(١٥) تفسير الخازن ، ١ : ١٢٩ .

وفي الجامع شـرح المختصر : وان كان لا يفى بالعهـد ، ارتكابا لأخف (1) الضررين وهو قاعدة مشهورة وسنة مأثورة وهى معتبرة إجماعا (2) . وفي الرسالة : ويُقاتَلُ العدو مع كل بَرٍّ وفاجر من الولاة (3) . انتهى .

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(1) أ و ب : بأخف .

(2) لم نعثر على هذا الشرح المختصر ومؤلفه كما ورد فى الفصل الرابع والعشرين ادناه هو خليل بن اسحاق ويحيى . ذكره أيضا فى الفصول التالية : ٢٣-٢٧-٣٧-٤٠-٤١ .

(3) ابن أبى زيد القيروانى ، الرسالة ، ٩٧ .

الفصل السابع عشر

في فرائض[1] الجهاد

فأقول وبالله التوفيق : قال ابن جزى فى القوانين هى ستة : النية ، وطاعة الامام ، وترك الغلول ، والوفاء بالأمان ، والثبات عند الزحف ، وتجنب الفساد . ولا بأس بالجهاد مع ولاة الجور [2] . انتهى.

قلت بل يجب الجهاد ولو كان معهم ، وفى المختصر : ولو مع والٍ جائر [3] . وقال الخرشى فى هذا (٣٧أ) / المحل : يعنى أن الجهاد فرض [4] ولو مع الوالى الجائر فى حكمه ، وهو الذى لا يضع الخُمُس فى موضعه ولا يفى بعهدٍ ارتكاباً لأخف [5] الضررين ، لأن الغزو معهم إعانة لهم على[6] جورهم وترك الغزو معهم خذلان للاسلام ، ونصرة الدين واجبة .والمراد بالوالى أمير الجيش [7] .

وقال الشبرخيتى عند قول المصنف ولو مع والٍ جائر فى رعيته : بأن كان يظلمهم أو فى غنيمته[8] بأن كان لا يضع الخمس موضعه، لقوله صلى الله عليه وسلم : الجهاد ماض منذ بعث الله نبيه لا ينقضه [9] جور من جار ولا عدل من عدل [10] . وغزا أبو[11] أيوب الأنصارى مع يزيد بن معاوية بعد أن توقف ثم ندم على توقفه ، وقيل لابن عباس أغزو [12] مع إمام لا يريد الا الدنيا ، فقال : قاتل أنت عن حظك من الآخرة[13]. وقال عبد الباقى عند قول المصنف ولو مع والٍ جائر : أى أمير جيش لا يضع الخمس فى (٣٧ب) موضعه ارتكابا لأخف[14] الضررين، لأن الغـزو معه إعانة له على جوره / وتركه معه خذلان للاسلام ،ونصرة الدين واجبة. وكذا مع ظالم فى أحكامه أو فاسق بجارحة[15].

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(١) د : فضائل .

(٢) ابن جزى ، القوانين ، ١٤٤ .

(٣) المختصر ، ١١١ .

(٤) الخرشى : فرض كفاية .

(٥) أ و ب : بأخف

(٦) ج ود : إعانة على .

(٧) الخرشى ، ٢ : ٤٠٦ .

(٨) ب ود : غنيمة .

(٩) أ و ب : لا ينقصه .

(١٠) من عدل : ساقطة من ج .

(١١) أبو : ساقطة من ب .

(١٢) ب و الشبرخيتى : أغزوا .

(١٣) الشبرخيتى ، ٢ : ورقة ٦٢ وجه .

(١٤) أ و ب : بأخف .

(١٥) شرح عبد الباقى على المختصر ، ٣ : ١٣٥ . والفاسق بجارحـة هو من ليس كافرا بالعقيدة ، إنما يرتكب معصية مثل شرب الخمر (المحقق) .

الفصل السادس عشر

في شروط وجوب[1] الجهاد

فأقول وبالله التوفيق : قال ابن جُزَي في القوانين هي ستة : الاسلام والبلوغ والحرية والذكورية (٣٦ب) والاستطاعة بالبدن والمال [2] . وفي المختصر : وسَقَطَ بمرض/وصبا وجنون وعمى وعرج وأنوثة وعجز عن محتاج له ورقٍ ودَيْنٍ حلّ ، كوالدين في فرض كفاية [3] ببحر أو خطر لا جَدّ والكافر كغيره في غيره [4] . انتهى . وقال في القوانين : والأب الكافر كالمسلم في منع الأسفار والأخطار ، الا في الجهاد لتهمته ، وقيل يمنع مطلقا [5] . وفي الزهرات الوردية : اعلم أن لوجوب الجهاد ست شرائط لا يجب الا بها متى [6] اختل واحد منها سقط وجوبه ، وهي الاسلام والبلوغ والعقل والحرية والذكورية والاستطاعة بصحة البدن وما يحتاج اليه من المال [7] . انتهى

(١) د : في وجوب الجهاد .

(٢) ابن جزى ، القوانين ، ١٤٤ .

(٣) ب : الكفاية .

(٤) المختصر ، ١١١ . ومعنى العبارة الأخيرة هو أن الوالد المسلم والكافر يتكافآن في ترك فرض الكفاية لأجلهما . أما في الجهاد ، ففرض الكفاية فيه لا يترك لأجل الوالد الكافر لأن انتماءه لدين آخر لربما يكون السبب في أن يمنع ابنه عن الجهاد (المحقق)

(٥) ابن جزى ، القوانين ، ١٤٤ .

(٦) ج : متى في غير اختل . . .

(٧) عبد المعالي ، الزهرات الوردية ، ١ : ورقة ٢٢٩ وجه .

كمن قاتل لقصد الغنيمة فقط أو ليقال أو ليظهر شجاعة[1] أو لحمية قومه أو للذب عن ماله أو أهله أو اصون عرضه . . . أو نحو ذلك ، وشهيد الآخرة فقط كالغريق والحريق والمبطون [2] . انتهى . ثم إن الجهاد كما قال الخرشي على أربعة أقسام : جهاد بالقلب وهو مجاهدة الشيطان والنفس عن الشهوات المحرمة ، وجهاد باللسان وهو الأمر بالمعروف والنهى عن المنكر ، وجهاد باليد وهو زجر الأمراء أهل المناكر بالأدب والضرب [3] باجتهادهم ، ومنه إقامة الحدود ، وجهاد بالسيف ولا ينصرف حيث أطلق الا اليه[4] . انتهى .

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(١) أ : شجاعته .
(٢) ب : والمطبون .
(٢) الشبرخيتى ، ١ : ورقة ٣١٨ وجه .
(٣) الخرشي : بالضرب والأدب .
(٤) الخرشي ، ٢ : ٤٠٦ .

الفصل الخامس عشر

في حد الجهاد

فأقول وبالله التوفيق : أما حد الجهاد فقد قال ابن عرفة : هو [1] قتال مسلم كافرا غير ذي عهد لإعلاء كلمة الله تعالى أو حضوره له أو دخوله أرضه له [2] . انتهى . قال الخرشي : وقوله لإعلاء كلمة الله يقتضي أنّ من قاتل للغنيمة أو لاظهار الشجاعة وغيرها [3] لا يكون مجاهدا فلا يستحق الغنيمة حيث ظهر [4] ذلك ولا يجوز [5] له تناولها حيث علم من نفسه ذلك [6] .

(٣٥ب) قلت : وأصل هذا الحد ما جاء في صحيح البخاري عن أبي موسى / الأشعري قال : جاء رجل الى النبي صلى الله عليه وسلم فقال : الرجل يقاتل للمغنم ، والرجل يقاتل للذكر ، والرجل يقاتل ليُرى مكانُه ، فمن في سبيل الله ؟ فقال [7] : من قاتل لتكون [8] كلمة الله هي العليا فهو في سبيل الله [9] . وفي المدخل : اذا نوى أن يقاتل لتكون كلمة الله هي العليا لا يضره ما اعتراه بعد ذلك من قتالهم [10] غضبا أو حمية أو ما أشبهها [11] ، لان هذا كان من وساوس [12] الشيطان ونزغاته [13] وهواجس [14] النفوس التي لا تملك والله عز وجل قد رفع ذلك عنا [15] . انتهى . قلت : ولا يضره أيضا قصد الغنيمة اذا قاتل لاعلاء كلمة الله [16] كما بينه العلماء ، ولذلك قال الشبرخيتي في شرح المختصر عند قول المصنف ولا يغسل شهيد معترك : واعلم أن الشهيد ثلاثة أقسام : شهيد دنيا وآخرة ، وشهيد دنيا فقط ، وشهيد آخرة فقط ، (٣٦أ) فشهيدهما كمن قاتل الكفار لإعلاء كلمة الله تعالى ، صحبه قصد الغنيمة أم لا ، وشهيد الدنيا فقط /

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(١) ب . فهو .
(٢) ابن عرفه ، الحدود ، ١٣٩ .
(٣) الخرشي : وغيرهما .
(٤) الخرشي : أظهر .
(٥) ج : تجوز .
(٦) الخرشي ، ٣ : ١٠٥ .
(٧) البخاري : قال .
(٨) ج ود : ليكون .
(٩) صحيح البخاري ، ٤ : ٢٥ .
(١٠) المدخل : قتاله .
(١١) أ : اشبههما .
(١٢) أ وج و د : وساويس .
(١٣) ج : نزعاته .
(١٤) ب : هواجيس .
(١٥) ج : عنه .
(١٥) ابن الحاج ، المدخل ، ٣ : ٧ .
(١٦) ب : كلمته .

ويدل على استمرار وجوب الجهاد أيضا قوله (١) عليه الصلاة والسلام : الجهاد ماض ـ أي مستمر ـ منـذ بعث الله نبيه لا ينقضه جور من جار ولا عدل من عدل. وقوله عليه الصلاة والسلام كما في المدخل: لن(٢) يبرح هذا الدين قائما يقاتل (٣) عليه عصابة من المسلمين حتى تقوم الساعة (٤) . انتهى .

(١) د : لقوله .
(٢) ج و د : لم .
(٣) المدخل : تقاتل .
(٤) ابن الحاج ، المدخل ، ٣ : ١٠ .

الفصل الرابع عشر

فى استمرار وجوب الجهاد على الأمة بعد الصحابة ، رضى الله عنهم

(٣٤ أ) فأقول / وبالله التوفيق : إن وجوب الجهاد مستمر على الأمة بعد الصحابة رضوان الله عليهم ، لقوله تعالى فى سورة البقرة : (وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ لِلَّهِ (١) وقوله تعالى فى سورة الانفال : (وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ (٢) وفى التكملة تفسير عبد الرحمن السيوطى عند قوله تعالى : (حَتَّى لَا تَكُونَ فِتْنَةٌ) حتى لا يوجد شرك (٣) . وفى تفسير الخازن : قال ابن عباس يعنى حتى(٤) لا يكون شرك . وقال عند قوله تعالى : (وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ) يعنى تكون الطاعة والعبادة كلها خالصة لله (٥) دون غيره(٦) . ويدل على استمرار وجوب الجهاد أيضا قوله تعالى : (فَإِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا فَضَرْبَ الرِّقَابِ (٣٤ب) حَتَّى إِذَا أَثْخَنْتُمُوهُمْ / فَشُدُّوا الْوَثَاقَ فَإِمَّا مَنًّا بَعْدُ وَإِمَّا فِدَاءً حَتَّى تَضَعَ الْحَرْبُ أَوْزَارَهَا (٧) . قال المفسرون أى : حتى تنقضى(٨) الحرب ولم يبق الا مسلم أو مسالم . . . والمعنى حتى يضع أهل الحرب شركهم ومعاصيهم وهو غاية لما ذكر من الضرب (٩) والشد والمن والفداء(١٠) بمعنى أن هذه الأحكام جارية فيهم حتى لا يكون حرب مع المشركين بزوال شوكتهم وقيل بنزول عيسى عليه السلام (١١) . وفى مسند أحمد فى حديث الدجال ثم ينزل عيسى عليه السلام الى أن قال فيقتله حتى ان الشجر والحجر ينادى ياروح الله هذا يهودى فلا يترك ممن كان يتبعه(١٢) أحداً الا قتله . وقد روى البخارى فى صحيحه حديث : ليترلن ابن مريم حكما عدلا فليكسرن الصليب وليقتلن الخنزير وليضعن الجزية، وفى (٣٥ أ) رواية أبى داوود / الطيالسى حتى يهلك فى زمانه الملل كلها غير الاسلام (١٣) .

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(١) سورة البقرة ، ١٩٣ .
(٢) سورة الأنفال ، ٣٩ .
(٣) ج : توجد شروط .
(٣) تفسير الجلالين ، ١ : ١٦٠ .
(٤) حتى : ساقطة فى الخازن .
(٥) الخازن : كلها لله خالصة .
(٦) تفسير الخازن ، ٢ : ١٨٣ .
(٧) سورة محمد ، ٤ .
(٨) أ و ج و د : ينقضى .
(٩) د : الضر .
(١٠) البيضاوى : وهو غاية للضرب أو الشد أو المن أو الفداء .
(١١) تفسير البيضاوى ، ٥٠٨ .
(١٢) ب : يتبعه الدجال .
(١٣) صحيح البخارى ، ٤ : ٢٠٥ باختلاف فى النص .

(٣٣ب) فرض / كفاية على المشهور يسقط (١) بفعل البعض لقوله تعالى : (فَضَّلَ اللهُ الْمُجَاهِدِينَ بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ عَلَى الْقَاعِدِينَ دَرَجَةً وَكُلًّا وَعَدَ اللهُ الْحُسْنَى (٢)) . . . دل(٣) على أن الخطاب للجمع على سبيل البدلية وأنه يسقط بفعل البعض ولو كان على الأعيان لكان القاعد بلا ضرورة عاصيا (٤) وقال (٥) الشبرخيتي في شرح المختصر في هذا المحل : فان قيل كيف غضب صلى الله عليه وسلم على الثلاثة (٦) الذين خلفوا مع أنه فرض كفاية ؟ فالجواب أنه كان فرض عين على الأنصار لمبايعتهم رسول الله صلى الله عليه وسلم على ذلك ، فكان تخلفهم عن (٧) هذه الغزوة كبيرة . قاله السهيلي في الروض الأنف في حديث الثلاثة ، عن ابن بطال(٨) . انتهى .

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(١) الخرشي : ويسقط .
(٢) سورة النساء ، ٩٥ .
(٣) الخرشي : علم .
(٤) الخرشي ، ٢ : ٤٠٦ .
(٥) ج : قال
(٦) ج : ثلاثة .
(٧) ج ود : على .
(٨) الشبرخيتي ، ٢ : ورقة ٦٣ ظهر . وانظر الروض الأنف للسهيلي ، ٢ : ٣٢٣ .

الفصل الثالث عشر

في حكم الجهاد

فأقول وبالله التوفيق : وأما حكم الجهاد فهو أنه فرض(١) على الناس لقوله تعالى : ﴿كُتِبَ عَلَيْكُمُ الْقِتَالُ(٢)﴾ ولقوله عليه الصلاة والسلام (٣) : الجهاد واجب عليكم مع أمير برّ أو(٤) فاجر . أخرجه أبو داوود . قال النفراوى فى الفواكه الدوانى شرح الرسالة : ويتعين على أمير المؤمنين الجهاد / (٣٣ أ) وعلى جماعة المسلمين إن لم يكن(٥) . انتهى . وفرضه على الكفاية على ما ذهب إليه الجمهور . وقال محمد ابن احمد بن جزى فى قوانين الأحكام : هو فرض كفاية عند الجمهور . وقال ابن حبيب : فرض عين . وقال الداوودى هو فرض عين (٦) على كل من يلى الكفار (٧) واذا حميت أطراف البلاد وسدت الثغور سقط فرض الجهاد وبقى نافلة . ويتعين بثلاثة (٨) أسباب : أحدها أمر الامام . فمن عينه الامام وجب(٩) عليه الخروج . والثانى : أن يفجأ العدو بلاد الاسلام (١٠) فيتعين عليهم دفعه فان لم يستقلوا(١١) لزم من قاربهم فان لم يستقل (١٢) الجميع وجب على سائر المسلمين حتى يندفع العدو . والثالث : لاستنقاذ (١٣) أسارى المسلمين من أيدى(١٤) الكفرة(١٥) . وفى المختصر : الجهاد فى أهم جهة ، كل سنة — وان خاف محاربا ، كزيارة الكعبة(١٦) — فرض كفاية(١٧) . قال الخرشى فى شرح المختصر فى هذا المحل : يعنى أن الجهاد . .

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(١) ج : الجهاد فرض . د : الجهاد أنه فرض .

(٢) سورة البقرة ، ٢١٦ .

(٣) ب و د : عليه السلام .

(٤) أ و ج : وفاجر .

(٥) النفراوى ، الفواكه الدوانى ، ١ : ٤٦٣ : يجب على الامام أو على عموم الناس ان لم يكن إمام إخــراج طائفة لقتال الكفار كل سنة .

(٦) كل الأصول : وفرض كفاية .

(٧) القوانين : وهو فرض كفاية عند الجمهور وقال الداوودى : هو فرض عين على من يلى الكفار .

(٨) القوانين : لثلاثة .

(٩) د : واجب .

(١٠) القوانين : المسلمين .

(١١) د : يشتغلوا .

(١٢) د : لم يشتغل .

(١٣) القوانين : استنقاذ .

(١٤) ب و ج : أيد .

(١٥) ابن جزى ، القوانين ، ١٤٤ .

(١٦) المراد بزيارة الكعبة إقامة الموسم أى الوقوف بعرفة فى كل سنة ، لأن زيارة الكعبة ليست فرضا لذا يجب على الامام أن يرسل جماعة فى كل سنة لاقامة الموسم ان كان هناك إمام والا فيكون فرض الكفاية على جماعة المسلمين .

(١٧) المختصر ، ١١١ .

فى سبيل الله ما بين الدرجتين كما بين السماء والارض [١] . وفيه أيضا فى بيان فضل رباط الخيل عن أبى هريرة عن عبد الله بن عمر قال : قال رسول الله صلى الله عليه وسلم : من احتبس فرسا فى سبيل الله إيمانا (٣٢ب) بالله وتصديقا بوعده فان شبعه وريه وروثه وبوله فى ميزانه يوم / القيامة [٢] وفيه أيضا فى بيان فضل من جهز غازيا فى سبيل الله فقد غزا ومن خلف غازيا فى سبيل الله أو خلفه بخير ، عن زيد بن خالد أن رسول الله صلى الله عليه وسلم قال : من جهز غازيا فى سبيل الله فقد غزا ومن خلف غازيا فى سبيل الله بخير فقد غزا [٣] . وفيه أيضا فى بيان فضل الرباط عن سهل بن سعد الساعدى [٤] أن رسول الله صلى الله عليه وسلم قال: رباط يوم فى سبيل الله خير من الدنيا وما عليها [٥] . انتهى .

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(١) صحيح البخارى ، ٤ : ١٩ .

(٢) صحيح البخارى ، ٤ : ٣٤ . والحديث فى البخارى عن سعيد المقبرى أنه سمع أبا هريرة يقول :

(٣) ومن خلف غازيا فى سبيل الله بخير فقد غزا : ساقطة من ١ . صحيح البخارى ، ٤ : ٣٢ .

(٤) صحيح البخارى : رضى الله عنه .

(٥) ب و ج و د : وما فيها . صحيح البخارى ، ٤ : ٤٣ .

الفصل الثاني عشر

فى ترغيب الناس فى الجهاد

فأقول وبالله التوفيق : قد ورد[1] ترغيب الناس فى الجهاد فى الكتاب والسنة فى آيات كثيرة ، وأحاديث كثيرة . ومثال ذلك فى الكتاب قوله تعالى : (فَلْيُقَاتِلْ فِي سَبِيلِ اللهِ الَّذِينَ يَشْرُونَ الْحَيَاةَ الدُّنْيَا بِالآخِرَةِ وَمَنْ يُقَاتِلْ فِي سَبِيلِ اللهِ فَيُقْتَلْ أَوْ يَغْلِبْ فَسَوْفَ نُؤْتِيهِ أَجْراً عَظِيماً [2]) وقوله تعالى : (لاَ يَسْتَوِي الْقَاعِدُونَ مِنَ الْمُؤْمِنِينَ غَيْرُ أُولِي الضَّرَرِ وَالْمُجَاهِدُونَ فِي سَبِيلِ اللهِ بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ فَضَّلَ اللهُ الْمُجَاهِدِينَ بِأَمْوَالِهِمْ (٣١ب) وَأَنْفُسِهِمْ عَلَى الْقَاعِدِينَ دَرَجَةً / وَكُلاًّ وَعَدَ اللهُ الْحُسْنَى وَفَضَّلَ اللهُ الْمُجَاهِدِينَ عَلَى الْقَاعِدِينَ أَجْراً عَظِيماً . دَرَجَاتٍ مِنْهُ وَمَغْفِرَةً وَرَحْمَةً وَكَانَ اللهُ غَفُوراً رَحِيماً [3]) . وقوله تعالى : (إِنَّ اللهَ اشْتَرَى مِنَ الْمُؤْمِنِينَ أَنْفُسَهُمْ وَأَمْوَالَهُمْ بِأَنَّ لَهُمُ الْجَنَّةَ يُقَاتِلُونَ فِي سَبِيلِ اللهِ فَيَقْتُلُونَ وَيُقْتَلُونَ وَعْداً عَلَيْهِ حَقّاً فِي التَّوْرَاةِ وَالإِنْجِيلِ وَالْقُرْآنِ وَمَنْ أَوْفَى بِعَهْدِهِ مِنَ اللهِ فَاسْتَبْشِرُوا بِبَيْعِكُمُ الَّذِي بَايَعْتُمْ بِهِ وَذَلِكَ هُوَ الْفَوْزُ الْعَظِيمُ [4]) . وقوله تعالى : (إِنَّ اللهَ يُحِبُّ الَّذِينَ يُقَاتِلُونَ فِي سَبِيلِهِ صَفّاً كَأَنَّهُمْ بُنْيَانٌ مَرْصُوصٌ [5]) . وقوله تعالى : (يَا أَيُّهَا الَّذِينَ آمَنُوا هَلْ أَدُلُّكُمْ عَلَى تِجَارَةٍ تُنْجِيكُمْ مِنْ عَذَابٍ أَلِيمٍ . تُؤْمِنُونَ بِاللهِ وَرَسُولِهِ وَتُجَاهِدُونَ فِي سَبِيلِ اللهِ بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ [6]) . هذا مثال ما ورد فى الكتاب فى ترغيب الناس فى الجهاد .

(٣٢أ) وأما مثال ما / ورد فى ذلك من جهة السنة ، فقد ورد فى صحيح البخارى فى بيان فضل الجهاد عن أبى هريرة قال : جاء رجل الى رسول الله صلى الله عليه وسلم ، فقال : دُلّنى على عمل يعدل الجهاد ، قال : لا أجده [7] . وفيه أيضا عن أنس بن مالك عن النبى صلى الله عليه وسلم ، قال : لغدوة فى سبيل الله أو روحة خير من الدنيا وما فيها [8] ، وفيه أيضا فى بيان درجات المجاهدين فى سبيل الله عن أبى هريرة[9] أنه قال : قال رسول الله صلى الله عليه وسلم : إن فى الجنة مائة درجة أعدها الله للمجاهدين

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(١) ج : وردت .
(٢) سورة النساء ، ٧٤ .
(٣) سورة النساء ، ٩٥ و ٩٦ .
(٤) سورة التوبة ، ١١١ .
(٥) سورة الصف ، ٤ .
(٦) سورة الصف ، ١٠ و ١١ .
(٧) صحيح البخارى ، ٤ : ١٨ .
(٨) صحيح البخارى ، ٤ : ٢٠ .
(٩) صحيح البخارى : رضى الله عنه .

بيت أبيه وأمه فينظر هل يهدى له[1] ؟ قال مالك وكان عمر بن الخطاب رضى الله عنه يشاطر العمال فيأخذ نصف أموالهم حين ظهرت لهم أموال بعد الولاية لم تكن تعرف [2] لهم ، لأن ما أصاب العامل بغير رشوة وان كان حلالا فلايستحق ذلك لأن له بالامرة قوة على أن ينال من الحلال مالا ينال غيره فيرجع ما يزيد له الى بيت المال .

وقال عتاب بن أُسَيد : والله ما أصبت فى عملى الذى ولانى رسول الله صلى الله عليه وسلم الا ثوبين (٣١أ) كسوتهما / مولاى كيسان[3] . انتهى .

وفى شرب الزلال بعد أن قال :

وكل مأخوذ لحكم [4] دعه ولو قضى بالحق لا تأكله

ومثله هدية العمال اذ كله سحت من الضلال[5]

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(١) صحيح البخارى ، ٩ : ٨٨ باختلاف فى اللفظ .

(٢) ج ود : تعرف ذلك لهم .

(٣) ملخص من سراج الملوك ، الباب الثالث والستون ، ٢٣٨ .

(٤) أ و ب : بحكم .

(٥) (الرجز) شرب الزلال ، الابيات ٩٣ و ٩٤ .

الفصل الحادى عشر

فى حكم الاستخلاف على البلاد (١) وبيان الشروط التى تؤخذ على العمال وحكم هداياهم

فأقول وبالله التوفيق : أما حكم الاستخلاف على البلاد (٢) فقد قال ابن العربــى فى الأحكام : الخلفاء على أقسام(٣) .أولهم الامام الأعظم وآخرهم العبد فى مال سيّده ثم قال قال النبى صلى الله عليه وسلم: كلكم راع وكلكم مسئول عن رعيته .

فالامام راع على الناس لكن لا يمكنه تولى كل الأمور بنفسه فلا بد له من الاستنابة ، وهى على (٤) (٣٠أ) أقسام كثيرة . أولها الاستخلاف على البلاد ، إما على العموم وإما على الخصوص / فمن قلمه على الخصوص وعيّنه فى صنف وقف نظره حيث خص به . ومن قلمه على العموم فكل ما(٥) فى المصر يتقدم عليه (٦) وفى المعيار : قال ابن الحاج : اذا أمّر أمير المسلمين أميرا على موضع ولم يقيد ولايته بشىء فالظاهر عموم ولايته فى كل شىء .

وأما بيان الشروط التى تؤخذ على العمال فاعلم أرشدك الله أنه (٧) يجب كما فى ضياء الخلفاء أن تولى الاعمال أهل الحزم والكفاية والصدق والأمانة . وتكون التولية للتقوى لا للهوى .

وكان عمر بن الخطاب رضى الله عنه اذا بعث عاملا اشترط عليه خمسة أمور : ألا يركب البراذين ، ولا يلبس الرقيق ، ولا يأكل النقى ، ولا يتخذ حاجبا ولا يغلق بابا على حوائج الناس وما يصلحهم ، ويقول له إنى لم أستعملك على أبشار الناس ولا أعراضهم ولا على أموالهم ، وانما استعملك(٨) لتصلى بهم وتقضى بينهم بالعدل .

(٣٠ب) وأما / حكم هداياهم فقد ورد فى صحيح البخارى أن النبى صلى الله عليه وسلم استعمل رجلا يقال (٩) له ابن اللتبية فلما جاء قال: يا رسول الله(١٠) هذا لكم وهذا أهدى لى. فغضب النبى صلى الله عليه وسلم وقال: ما بال الرجـــل نستعمله على عمل من أعمالنا فيقـــول هذا لكم وهذا أهدى لى أفلا(١١) قعد فى

(١) ب : العباد .
(٢) أ و ب : العباد .
(٣) ج : هم على اقسام . د : على ثلاثة أقسام .
(٤) على : ساقطة من د .
(٥) أ : وكلما .
(٦) ابن العربى ، أحكام القرآن ، ٤ : ١٦٢٩ . ولم يتقيد المصنف بألفاظ أحكام القرآن .
(٧) أنه : ساقطة من ج .
(٨) ب : استعملتك .
(٩) ج : يقول .
(١٠) صلى الله عليه وسلم : زيادة فى د .
(١١) ج : هذى لى فلا .

له الاختصاص به (١) وبحريمه، فحريم القرية محتطبها ومرعاها أى الأماكن التى يؤخذ منها الحطب لنفع أهلها والتى ترعى فيها مواشيها مما يدرك غدوا ورواحا. قال الخرشى وغيره: لا يجوز لأحد أن يحدث فى الحريم ما يضر بأهل تلك العمارة (٢) من بناء أو غيره (٣). قال سحنون: وأما ما كان من العمارة (٠) على يوم لاتدركه المواشى فى غدوها ورواحها فذلك بعيد فيشاور الامام فيه أهل الرأى (٤). وفى الشبرخيتى: قد (٢٩ أ) يكون المحتطب أبعد من المرعى (٥) / وعكسه والظاهر أن الحريم هو أبعدهما (٦). انتهى.

وحريم الدار المحفوفة بالموات ما يرتفق به أهلها (٧) من مدخلها ومخرجها ومصالحها (٨) من مكان يطرح فيه ترابها ويسيل فيه ماء ميازيبها ومراحضها (٩). وأما الدار المحفوفة بالأملاك فليس لأحد أن يختص بحريم منها بل لكل واحد من السكان أن ينتفع (١٠) بالحريم الذى بازاء داره مالم يضر بجيرانه فيمنع. (١١) وحريم البستان من النخل (١٢) وغيره ما فيه مصلحته (١٣) من حواشيه ومدخله ومخرجه ويرجع فى ذلك لأهل المعرفة بذلك. وحريم بئر الزراعة وما أشبهها هو مالا يضر بمائها (١٤) ووارردها. وحريم بئر الماشية ما لا يضيق على وارد بمواشيه. وكذا (١٥) حريم النهر ما لا يضر ما يرده فليس لكل هذه حد مخصوص عند مالك وابن (٢٩ب) القاسم وعن سحنون / حريم بئر الزراعة والوادى فى أرض غير مملوكة عشرون (١٦) ذراعا. وقال ابن شهاب: حريم العيون خمسمائة ذراع. وحريم النهر ألف ذراع. انتهى. وحريم الطريق سبعة أذرع لقوله عليه السلام: اذا اختلفت الناس فى الطريق (١٧) فحدها سبعة أذرع (١٨). انتهى.

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(١) به: ساقطة من تعليم الراضى.
(٢) .... (٠) ساقطة من: ج.
(٣) شرح الخرشى على المختصر، ٥: ٦٧. « لا يجوز لأحد أن يحدث فى الحريم بناء يضر بأهل تلك العمارة ».
(٤) عبد الله بن فودى، تعليم الراضى، ورقة ٣.
(٥) د: المراعى.
(٦) شرح الشبرخيتى على المختصر، ٤: ٤١ ظهر.
(٧) المحفوفة بالموات ما يرتفق به أهلها: ساقطة من ١.
(٨) تعليم الراضى: ومصالحها.
(٩) رحض الثوب: غسله. والميازيب: جمع ميزاب وهو مصرف الماء (الأنابيب) لمياه الأمطار وغيرها.
(١٠) ج: تنفع
(١١) ج: ويمنع.
(١٢) ج و د: النخيل.
(١٣) ج و د وتعليم الراضى: مصلحة.
(١٤) ب: بمائها.
(١٥) ج: وكذلك.
(١٦) ج: عشرين.
(١٧) ب: الطرق.
(١٨) عبد الله بن فودى، تعليم الراضى، ورقة ٥-٧.

(٢٧ب) لا يجوز للامام أن يقطع لأحد / معمور أرض أُخذت عَنوة على طريق الملك ، بل يجوز ان كان على طريق الامتاع . والمراد بالمعمور ما صلح لزراعة الحب وعقار (١) الكفار . وأما ما لا(٢) يصلح لزراعة الحب وليس من عقار الكفار فهو من الموات ، وان(٣) صلح لغرس الشجر به . وانما لم يقطع المعمور عَنوة ملكا لأنها بمجرد الاستيلاء تكون وَقْفاً. وأما معمور غير العَنوة فيقطعه ملكا وإمتاعا (٤). الا أرض الصلح فلا يقطع معمورها لا ملكا ولا امتاعا(٥). وفي النكت،الأراضي خمسة : أرض عَنوة فلاتباع ولا توهب وانما تبقى لمنافع المسلمين . وأرض صلح فهي لأهلها يصنعون بها ما أحبوا . وأرض أسلم أهلها عليها(٥) فهي (٢٨ أ) لهم وليس فيها شيء . وأرض هرب عنها أهلها وتركوها ، فهي للامام يجتهد فيها(٦) / ما رآه . وأرض لم يسلم أهلها ولم يصالحوا فللامام أن يقطعها لمن شاء . انتهى .

وأما الموات(٧) فهي حكم من الاحكام (٨) وليست من الولايات وفي كتاب الراضي أسباب الاختصاص بموات الأراضي : واعلم ان الاختصاص يكون في الأرض باحيائها أوبكونها حريما لما أحياه المحيي أو باقطاع الامام لأحد فيها أو(٩) بحمايته(١٠) لها فهذه أربعة أسباب . ثم قال: واعلم أن إحياء(١١) الأرض الموات (١٢) وهي التي لا عمارة فيها ولا يملكها أحد يفتقر الى إذن الامام إن كان الموات قريبا من العمران فيحيها المسلم باذن الامام بخلاف الذمي فلايجوز له الاحياء في القريب مطلقا . واما البعيد (٢٨ب) فيجوز احياؤه بغير اذن الامام ولو / لذمي في غير جزيرة العرب ؛ مكة والمدينة واليمن .

والمراد بالقريب ما في حريم البلد وما(١٣) زاد عليه مما يقربه . والبعيد الخارج عن الحريم وبعد عنه. ثم قال : وان أحيا المسلم في القريب بغير اذن الامام فللامام إمضاؤه أو جعله متعديا(١٤) فيأمره بقلعه أو يعطيه قيمته منقوضا ويبقيه للمسلمين أو يعطيه لغيره(١٥) . ثم قال بعد كلام: واعلم أن من أحيا مواتا ثبت

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(١) تعليم الراضي : من عقار .
(٢) ب وج و د : وما لا .
(٣) ب : وان – توكيدي صلح .
(٤) .... (٥) ساقطة من ج .
(٥) أ : عليها أهلها .
(٦) ب وج و د : فيه .
(٧) د : الموالات .
(٨) ومعنى هذا أن الموات يتعلق بها حكم وبيانه في كتب الفقه .
(٩) د : وبحمايته .
(١٠) تعليم الراضي : أو لحمايته .
(١١) ج : الاحياء الأرض .
(١٢) د : الموالا ت .
(١٣) أو تعليم الراضي : أو ما .
(١٤) ج : معتديا .
(١٥) عبد الله بن فودي : تعليم الراضي ، ورقة ٣ .

وأما قتال أهل البغي فقد نصه الله في كتابه حيث قال : (وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ (٢٦ب) اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الأُخْرَى / فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللهِ (١)) . واستوفى الله بيان ذلك بعلي بن أبي طالب رضي الله عنه .

وأما ولاية الصلاة فهي أصل في نفسها وفرع للأمارة (٢) فان النبي صلى الله عليه وسلم كان اذا بعث اميرا كانت الصلاة اليه ، ولكن لما فسدت الولاة ولم يكن فيهم من ترضى حاله بقيت الولاية (٣) في يده بحكم الغلبة . وقدم للصلاة من ترضى حاله سياسة منهم للناس وإبقاء على أنفسهم .

وأما ولاية الصدقات فقد استعمل رسول الله صلى الله عليه وسلم ولاية الصدقة كثيرا .

وأما ولاية الحج فهي مخصوصة ببلد الحج وأول أمير بُعِث اليه أبوبكر الصديق رضي الله عنه ، بعثه رسول الله صلى الله عليه وسلم سنة تسع قبل حجة الوداع وأرسل معه سورة البراءة ثم أردفه بعلي رضي الله عنه .

(٢٧أ) وأما ولاية الحسبة (٤) فهي محدثة وأصلها أكبر الولايات وهو الأمر بالمعروف / والنهي عن المنكر ولكثرة ذلك رأى الأمراء ان يجعلوها الى رجل يتفقدها في الاعيان (٥) مع الساعات

وأما ولاية النقابة فهي محدثة (٦) لما كثرت الدعاوى في الأنساب الهاشمية لأستيلائها على الدولة فنصب الولاة قوما يحفظون الأنساب لئلا يدخل فيها من ليس منها (٧) .

وأما ولاية الاقطاع فقد قال في كتاب تعليم الراضي أسباب الاختصاص بموات الأراضي : قد أقطع النبي صلى الله عليه وسلم الزبير (٨) أرضا فيها نخل من أموال بني النضير ، وتميما الداري عينون قرية بالشام قبل فتحها وثعلبة الخشني شيئاً من بلاده قبل فتحها ، وبلال بن الحارث معادن القبيلة (٩) . وقال قبل هذا الكلام بقليل : واعلم أن من أقطع له الامام بأرض (١٠) ، فانه يختص بها فتصير ملكا له يبيعه ويهبه ويورث عنه سواء أقطع (١١) من القيافي أو في العمران . لكن

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(١) سورة الحجرات ، ٩ .

(٢) ب : لامارة ، د : وفروع الامارة .

(٣) ب : الولاية الصدقات

(٤) ب : الولاية الحسبة .

(٥) الأحكام : الأحيان .

(٦) ج : محدثه الامراء .

(٧) ابن العربي ، احكام القرآن ، ٤ : ١٦٣٠ – ١٦٣٣ .

(٨) ا : الزبير . د : لزبير . اما تعليم الراضي فلا يذكر (الزبير) .

(٩) هكذا في كل الأصول . وفي تعليم الراضي « ما ورد القبيلة » ولكن جاء في الأحكام السلطانية للماوردي ص ١٩٨ ، أن رسول الله صل الله عليه وسلم « أقطع بلال بن الحارث المعادن القبلية جلسيها وغوريها وحيث يصلح الزرع من قدس . . . وفي الجلسي والغوري تأويلان أحدهما أعلاها وأسفلها . . . والثاني أن الجلسي بلاد نجد والغوري بلاد تهامة .

(١٠) هكذا في كل الأصول . والأنسب أقطعه أرضا (القاموس) ولربما ضمن معنى « حكم » .

(١١) أ وتعليم الراضي : أقطعه .

أو نائبه بأن يمنع من رعى كلأ مكان ليتوفر لدواب مخصوصة . وبجوازه (١) شروط أربعة :

الأول أن يكون للامام لقوله عليه السلام : لا حمى الا لله ولرسوله ، فالامام (٢) قائم مقامه عليه السلام . الثاني (٣) : أن يكون ذلك المحمى (٤) ما(٥) يُحتاج اليه لنفع المسلمين. الثالث : أن يكون قليلاً (٢٥ب) لا يضيق على / الناس بأن يكون فاضلا عن منافع أهل ذلك الموضع وليس فيه غرس ولا بناء لأحد كبطون الأودية والجبال والموات. والرابع : أن يكون لدواب الجهاد فى سبيل الله أوما ألحق بها كالخيل التى ترصد للجهاد والإبل التى يحمل عليها فى سبيل الله وكإبل الصدقة ودواب الفقراء . وقد حمى النبى صلى الله عليه وسلم النَّقيع بالنون – وهو صدر العقيق ، موضع على عشرين فرسخا من المدينة(٦) قدره ميل فى ثمانية أميال(٧) لخيل المهاجرين . وحمى عمر السَّرَف وهو موضع قرب التنعيم . واستعمل فيها هُنَيا لإبل الصدقة ودواب الفقراء والرَّبَذَة أيضا موضع بين الحرمين وهو بريد فى بريد. وقد زاد على ذلك بعض الخلفاء من بعده (٨) .

(٢٦أ) وأما ولاية وضع الجزية والخراج فقد صالح رسول الله صلى الله عليه وسلم / أُكَيْدِر دُومة وأهل البحرين وأمَّر عليهم العلاء ابن الحضرمى بعد تقديره . ولو لم يلق(٩) التقدير للخليفة لجاز أن يبعث من يُقَدِّر(١٠) كما فعل عمر رضى الله عنه حين بعث الى العراق عماله وأمرهم بمساحة الأرض ووضع الخراج عليها .

وأما حروب (١١) المصالح فهى ثلاثة : الردة وقطع الطريق(١٢) والبغى فالردة والقطع كانا فى حياة النبى صلى الله عليه وسلم فقطع أيدى القطاع وأرجلهم وسمَّر أعينهم كما فعلوا بالرعاة لما نزل عليهم : (إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللهَ وَرَسُولَهُ (١٣)) الآية واستوفى الله بيان الحرب فى الردة بأبى بكر الصديق رضى الله عنه وبيّن(١٤) أحكامه على يديه . وذلك مستوفىً فى كتب الحديث والفقه .

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(١) د : وبجوازه .
(٢) د : والامام .
(٣) تعليم الراضى : والثانى .
(٤) ج ود : الحمى .
(٥) تعليم الراضى : مما .
(٦) فى كل الأصول : (موضع على عشرين فرسخا وهو موضع من المدينة قدره . . .) . وما أثبتناه من تعليم الراضى .
(٧) تعليم الراضى : قدره ميل فى أميال .
(٨) عبد الله بن نودى ، تعليم الراضى أسباب الاختصاص بموات الأراضى ورقة ٩–١٠ .
(٩) الأحكام : يتفق التقدير لخليفة
(١٠) الأحكام : يقدره .
(١١)– الأحكام : حدود المصالح . وفى الأحكام السلطانية الماوردى : حروب المصالح : انظر ، ٤٤ من الطبعة الأولى ، مصر ، ١٩٠٩ .
(١٢) الأحكام : السبيل .
(١٣) سورة المائدة ، ٣٣ .
(١٤) ج : وبيان .

وأما ولاية رد المظالم (١) فهي (٢) ولاية غريبة أحدثها من تأخر من الولاة لفساد الناس(٣) . وهي عبارة عن كل حكم يعجز عنه القاضي فينظر فيه من هو أقوى يدا منه (٤) . و ذلك اذ(٥) التنازع اذا كان (٢٤ب) بين ضعيفين قوى أحدهما (٦) واذا كان بين قوى وضعيف(٧) / أو قويين والقوة في أحدهما بالولاية كظلم الامراء والعمال (٨) ، فهذا(٩) مما نصب له الخلفاء أنفسهم وأول من جلس له عبد الملك بن مروان ثم(١٠)جلس له عمر بن عبد العزيز فرد مظالم بنى أمية على المظلومين اذ كانت في أيدي الولاة(١١) الذين تعجز عنهم القضاة ، ثم صارت سنة ، على أنها في أصل وضعها داخلة في القضاء لكن الولاة أضعفوا القضاة ، ليتمكنوا (١٢) من ظلم الرعية ، وليحتاج الناس اليهم فيقعدوا عنهم فتبقى المظالم .

وأما ولاية الجهاد وقسم الغنيمة والفيء فقد أمّر النبي صلى الله عليه وسلم على الجيوش والسرايا كثيرا من أصحابه في كل غزوة لم يشهدها ، وقسموا الغنيمة فيها ؛ فدخلت إحدى الولايتين في الأخرى وللامام (٢٥أ) والوالي أن يفردهما (١٣) وقد علم قسم الفيء في زمانه عليه / الصلاة والسلام فثبت بذلك ولاية الفيء .

وأما ولاية الكتابة فقد كان للنبي صلى الله عليه وسلم كتّاب وللخلفاء بعده . وهي لضبط الجيوش لمعرفة أرزاقهم وضبط الأموال لتحصيل فوائدها لمن يستحقها .

وأما ولاية الحمى فهي مشهورة ، وأول من ولّى فيها أبوبكر الصديق رضي الله عنه ، ولّى مولاه أبا أسامة(١٤) على حمى الرَّبَذَة وولى عمر رضي الله عنه على حمى الشَّرف مولاه هُنَيًّا(١٥). وفي كتاب تعليم الراضي أسباب الاختصاص بموات الأراضي : واعلم ان الاختصاص بالأرض يحصل بحمى امام

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(١) الأحكام : ولاية المظالم .
(٢) د : فهو .
(٣) الأحكام : لفساد الولاية وفساد الناس .
(٤) الأحكام : منه يدا .
(٥) ان : ساقطة من ج .
(٦) الأحكام : أحدهما القاضي .
(٧) ا : ضعيف وقوى .
(٨) ج : العلماء .
(٩) د : فهذه .
(١٠) جلس له عبد الملك بن مروان ثم : ساقطه من ب .
(١١) والعتاة : زيادة في الأحكام .
(١٢) أ و ب : يمكنوا .
(١٣) أ : يفدهما . ب و ج و د : يعدهما . وما أثبتناه من الأحكام .
(١٤) د : مولاه أسامة .
(١٥) ابن العربي ، أحكام القرآن ، ٤ : ١٦٣٠-١٦٣٥ . لم يلتزم المصنف بترتيب ابن العربي للولايات في الأحكام ، كما أنه لم يلتزم بنص ما نقله في هذا الصدد .

الفصـــل العاشـــر

فى أقسام الولاية الشرعية [1]

فأقول وبالله التوفيق [2] : فاعلم أن أقسام الولاية الشرعية(٥) قد قسمها العلماء كما قال ابن العربى فى الأحكام ، وحصروها فى عشرين ولاية ، وهى الخلافة العامة ، والوزارة ، وولاية القضاء ، وولاية الحدود [3] ، وولاية رد المظالم [4] ، وولاية الجهاد [5] ، وولاية قسم الغنيمة ، وولاية قسم الفىء ، وولاية الكتابة ، وولاية الحمى [6] ، وولاية وضع الجزية ، وولاية وضع الخراج ، وولاية حروب المصالح [7] ، وولاية الصلاة ، وولاية الصدقة [8] ، وولاية الحج ، وولاية الحسبة ، وولاية النقابة ، وولاية الاقطاع وولاية الموات .

أما ولاية الخلافة فهى صحيحة [9] أزلية .

وأما ولاية الوزارة فهى ولاية شرعية . وهى عبارة عن رجل موثوق به فى دينه وعقله يشاوره الخليفة فيما يَعِن له [10] من الأمور .

(٢٤ أ) قال تعالى مخبرا عن موسى : ﴿وَاجْعَل لِّي وَزِيراً مِّنْ أَهْلِي / هَارُونَ أَخِي اشْدُدْ بِهِ أَزْرِي [11]﴾. وعن النبى صلى الله عليه وسلم وزرائى من أهل السماء جبريل وميكائيل ووزرائى من أهل الأرض أبوبكر وعمر .

وأما ولاية القضاء فقد قدم النبى صلى الله عليه وسلم فى حياته على بن أبى طالب رضى الله عنه حين بعثه الى اليمن . وقال له : لاتقض لأحد الخصمين حتى تسمع من الآخر .

وأما ولاية الحدود فهى على قسمين : ولاية تناول ايجابها وذلك للقضاة وتناول استيفائها وذلك للصالحين لها . فقد جعلها النبى صلى الله عليه وسلم لقوم منهم على بن أبى طالب ومحمد بن مسلمة .

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(١) .... (٥) ساقطة من ١ .
(٢) فأقول وبالله التوفيق : ساقطة من ١ .
(٣) الأحكام : حدود المصالح
(٤) الأحكام : ولاية الظالم .
(٥) الأحكام : الامارة فى الجهاد
(٦) الأحكام : ولاية الحمى والاقطاع .
(٧) هذه الولاية ليست فى الأحكام .
(٨) ١ : الصدقات .
(٩) صحيحة : ليست فى الأحكام .
(١٠) ب : يعن له أى يعرض له من الأمور .
(١١) سورة طه ، ٢٩-٣١ .

الثالث من أركان الملك صاحب شرطة ينصف للضعيف من القوى .

والرابع من أركانه صاحب خراج يستقضى(١) ولا يظلم الرعية .

وفى ضياء الخلفاء عد(٢) لهذه الأركان الأربعة على هذا الترتيب. قال عمر بن الخطاب لا يصلح الولى(٣) الا بأربع خصال : قوة على جمع (٤) المال من أبواب حله ، ووضعه فى حقــه ، وشدة لا جبروت فيها (٢٣ب) ولين لا وهن فيه(٥) ، فان / نقصت واحدة لم يصلح (٦) له أمره(٧) . انتهى .

(١) ج ود : يستقصى .
(٢) ا : عدد .
(٣) د : الوالى .
(٤) ج ود : جميع .
(٥) فى كل الأصول الأربعة : فيها .
(٦) ج : يصح .
(٧) لم نجد هذا النص فى سراج الملوك .

الفصـــل التاســع

فى أركان الولاية

(٢٢ب) /

فأقول وبالله التوفيق :

اعلم أن أركان الولاية أربعة هى أركان الملك ، ولايصلح الملك الا بها ، كما أن السرير لا يصلح الا بأربع قوائم .

الأول من أركانه وزير صدق(١) على الولاية ينبهه(٢) اذا نام ، ويبصره اذا عمى ، ويذكره اذا نسي (٣). وأعظم المصائب(٠) على الولاة(٤) والرعية أن يحرموا صوالح(٥) الوزراء والأعوان . ومن شروط (٦) الوزير أن يكون مكين الرحمة للخلق رءوفاً بهم .

الثانى من أركان الملك قاض لا تأخذه فى الله لومة لائم . وفى القوانين : تحتوى ولاية القاضى على عشرة أشياء ، الأول : الفصل بين المتخاصمين إما بصلح عن تراض(٧) وإما باجبار على حكم نافذ . الثانى : قمع الظالمين عن (٨) الغصب والتعدى وغير ذلك ، ونصرة المظلومين وإيصال كل ذى حق إلى حقه . (٢٣أ) الثالث : إقامة الحدود والقيام / بحقوق (٩) الله . الرابع : النظر فى الدماء والجراح . الخامس : النظر فى أموال اليتامى والمجانين وتقديم الأوصياء عليهم . . . السادس : النظر فى الأحباس . السابع : تنفيذ الوصايا . الثامن : عقد أنكحة (١٠) النساء اذا لم يكن لهن ولىّ أو عضلهن الولى . التاسع : النظر فى المصالح(١١) العامة من طرقات المسلمين وغير ذلك . العاشر : الأمر بالمعروف والنهى عن المنكر بالقول والفعل(١٢) . انتهى . ويجوز تعدده . وفى المختصر : وجاز تعدد مستقل أو خاص بناحية أو نوع (١٣) .

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(١) . . . . (٠) ساقطة من ج .
(٢) د : وينبهه .
(٣) د : سها .
(٤) الولاة : ساقطة من ج .
(٥) هكذا فى جميع الأصول جمعا لصالح ، وهو شاذ . والأصل فيه أن يكون لفاعلة وصفا لمؤنث العقلاء ، ولفاعل وصفا لغير العاقل وشذ فى الفارس مع ماماثله مثل هالك وسابق ، من أوصاف العاقل المذكر .
(٦) ب : شرط .
(٧) د : تراض منهما .
(٨) د : على .
(٩) القوانين : بحدود .
(١٠) القوانين : نكاح :
(١١) القوانين : مصالح .
(١٢) ابن جزى ، القوانين ، ٢٨٣ .
(١٣) المختصر ، ٢٠٧ .

والرابع والخامس: العـدل والاحسان(١). قال تعالى : (إِنَّ اللهَ يَأْمُرُ بِالْعَدْلِ وَالإِحْسَانِ)(٢) الآية .

فأما العدل ، فمنه نبوى جاءت به الرسل والأنبياء عليهم الصلاة والسلام . وحاصله أن يجمع (٢٢ أ) / السلطان الى نفسه حملة العلم الذين هم حفاظه ورعاته وفقهاؤه الأدلاء على الله القائمون بأمر الله ، الحافظون لحدود الله ، الناصحون لعباد الله ، فلا يفعل شيئا الا بأمرهم . ومنه اصطلاحى وهو(٣) السياسة التى اصطلح عليها الملوك قبل الاسلام . فيقوم بسببها أمر دنياهم ، ومن تركهـا منهم بطل أمره . فلما جاءت الشريعة أثبتت ما أثبتت وأبطلت ما أبطلت (٤) .

وأما الإحسان فهو رَعيُ مكارم الأخلاق . لما علم الله سبحانه أنه ليس كل نفس تصلح على العدل فقط بل تطلب الاحسان ، وهو فوق العدل ، أمرهما (٥) معا وخاصله أن الرعية للسلطان ثلاث (٦) أنفس . كبير ، وصغير ، ووسط بينهما . فَلْيجعل كبيرهم أبا ، ووسطهم أخا ، وصغيرهم ابنا . فَلْيبر أباه ، وَلْيكرم أخاه ، وَلْيرحم ابنه(٧) . انتهى .

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(١) ب : الرابع العدل والخامس الاحسان .
(٢) سورة النحل ، ٩٠ .
(٣) أ و د : وهى .
(٤) هذا الجزء عن العدل ملخص من سراج الملوك ، البابان الحادى عشر والثانى عشر .
(٥) هكذا فى كل الأصول . والأنسب « أمر بهما » ويجوز أن يكون هذا من باب الحذف والإيصال حيث حذف « الباء » فاتصل الضمير بالفعل .
(٦) د : على ثلاثة .
(٧) ملخص من سراج الملوك ، الباب الحادى عشر .

الفصل الثامن

فى أساس الامارة

(٢١ أ) فأقول وبالله / التوفيق : اعلم أن أساس الامارة كما فى ضياء الخلفاء خمسة أصول[١] :

الأول : ألا يولى الأمارة طالبها ، لحديث البخارى : إنا لا نستعمل على أمرنا هذا من أراده[٢] . بل يختار الامام الأعظم أولا[٣] أخيار المسلمين من علمائهم وصلحائهم فيرتضونه أن يكون أمير المسلمين[٤] لكونه أفضلهم وأصلح لذلك كما اختار الصحابة أبا بكر رضى الله عنه بعد رسول الله صلى الله عليه وسلم ، وعمر رضى الله عنه بعده . وكذا سائر الخلفاء الأربعة ، ولو كان الولاية بالتوارث لما رتبوا كذلك ، فان قيل طلب يوسف عليه السلام الملك بقوله: (اجْعَلْنِي عَلَى خَزَائِنِ الأَرْضِ إِنِّي حَفِيظٌ عَلِيمٌ) .[٥] قلنا[٦] يوسف نبى من أنبياء الله معصوم ، رأى[٧] أمانات الله ضائعة فى أيدى من ليسوا لها أهلا ، ولا وجه لأداء تلك الأمانات الا بامارته . فطلب ذلك حين رآه فرضاً عليه متعيناً ، لأنه لم يكن هناك غيره . (٢١ب) / وذلك مستثنى من[٨] منع طلب الامارة ليوصل الى الفقراء حظهم لا لحظ نفسه ، وأيضا يحتمل أن ذلك أوحى اليه[٩] .

الثانى : التزام المشاورة ، قال تعالى : (وَشَاوِرْهُمْ فِي الأَمْرِ[١٠]) لأن المستشير إن كان أفضل رأيا من المستشار فانه يزداد برأيه رأيا ، والا استفاد منه رأيا . وقال بعض الملوك : لا يمنعك علو مكانك فى نفسك من أن تجمع الى رأيك رأى غيرك ، واذا شاورت وأصبت حمد الناس رأيك وان اخطأت حملوا خطأك . ومن أقبح ما يوصف به الملك الاستبداد بالرأى وترك المشاورة .

والثالث: ترك الفظاظة. قال تعالى: (وَلَوْ كُنْتَ فَظًّا غَلِيظَ الْقَلْبِ لانْفَضُّوا مِنْ حَوْلِكَ[١١])

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(١) أ و ب : أمور .

(٢) انا لا نولى هذا من سأله : صحيح البخارى ، ٩ : ٨٠ .

(٣) ج : أن . أولا : ساقطة من د .

(٤) ب : المؤمنين .

(٥) سورة يوسف ، ٥٥ .

(٦) ا : قلت .

(٧) ا : ورأى .

(٨) ا : فى .

(٩) ملخص من سراج الملوك ، الباب الثالث والخمسون .

(١٠) سورة آل عمران ، ١٥٩ .

(١١) سورة آل عمران ، ١٥٩ .

الإمام (١) فى عصر وبلد واحد بالاجماع لقوله عليه الصلاة والسلام : من بايع إماماً فأعطاه صفقة يده وثمرة قلبه فليطعه إن استطاع فان جاء آخر ينازعه فاضربوا عنق الآخر : وفى رواية فاضربوه بالسيف كائنا من كان (٢) . لكن نقل الأبى عن ابن عرفة أن حدث اذا بويع الخليفتان فاقتلوا الآخر منهما ، إنما ذلك بحسب المكان حيث بلغ حكم الامام ، واما موضع بعيد عن حكم الامام جاز فيه عقد إمام آخر من ذلك القطر (٣) . انتهى .

(١) إتحاف المريد : إنه لا يجوز تعدده .
(٢) اللقانى ، إتحاف المريد بجوهرة التوحيد ، ١٦٤ .
(٣) الأبى ، شرح صحيح مسلم ، ٥ : ١٥٩ .

الفصـــل السابع

في شروط الامـــام

فأقول وبالله التوفيق : إن شروط الإمام أحد(١) عشر نوعا كما في ضياء الخلفاء . الأول : الاسلام ، (٢٠ أ) فلا ينعقد لكافر بالاجماع ، والثاني العدالة لأن الفاسق (٢) ربما تصرف في / الهوى ويتعدى فتضيع الحقوق ، الثالث : الذكورية ، الرابع : الحرية ، والخامس : البلوغ ، السادس : العقل ، والسابع : أن يكون مجتهدا في أصول الدين وفروعه إن وجد ، والا فأمثل مقلد ، الثامن : أن يكون شجاعا لا يضعف عن لقاء العدو وإقامة الحدود ، والتاسع : أن يكون ذا رأي وسياسة بتدبير الأمور ، يقدر على الشدة في مواضعها وعلى اللين في مواضعه ، والعاشر(٣) : ان يكون مقتدرا على إنفاذ أمره وحكمه ، والحادي عشر : يشترط(٤) في الإمام الأعظم أن يكون قرشيا إن وجد مع الشروط والا فكنانيا والا فمن ولد اسماعيل فان لم يوجد يولى أعجمي(٥) . انتهى .

وقال الشيخ السنوسي في شرح القصيدة الجزائرية عند قول الناظم : شروطها — أي الأمامة(٦) — جمة في الكتب قد بسطت (٧) . بعد أن ذكر هذه الشروط المتقدمة ، ذكر في الطوالع (٨) أن جمعا تساهلوا في هذه الصفات الثلاث أعني — السابع وما بعده . وقالوا تصح إمامة من لم يتصف بها ثم قال : (٢٠ب) قال الشيخ ابن عرفه / وهو خلاف عن الآمدي في عدّه لها(٩) في الشروط المتفق عليها(١٠) انتهى.

قلت ومن شروط الإمام أيضا الوحدة كما نقله الأبي عن الآمدي في أول كتاب الإمامة من صحيح مسلم (١١). وقال عبد السلام بن ابراهيم اللقاني في إتحاف المريد شرح جوهرة التوحيد : لا يجوز تعدد

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(١) أ و ج و د : احدى .

(٢) ج : الفسق .

(٣) ج : العاشرة .

(٤) ج : ان يشترط .

(٥) لقد اعتمد الشيخ عثمان بن فودي في تأليفه هذا الكتاب على كتاب « ضياء الخلفاء » اعتمادا كبيرا كما سنرى . ولكن لم يتم العثور بعد على مخطوط عنوانه « ضياء الخلفاء » غير أننا وجدنا تشابها بعيد المدى — كما سيتضح للقارئ — بين هذا المؤلف وبين كتاب « سراج الملوك » للطرطوشي . ولذلك نشير أثناء تحقيقنا الى « سراج الملوك » كلما يرد اسم « ضياء الخلفاء » ولقد ساعدنا ذلك كثيرا في تحقيق نص « بيان وجوب الهجرة . . . . »

(٦) أي الامامة : ساقطة من أ و ب .

(٧) (البسيط) .

(٨) طوالع الأنوار للقاضي عبد الله بن عمر البيضاوي المتوفى سنة ٦٨٥ هـ . وشرحه مطالع الأنظار لأبي الثناء شمس الدين بن محمود بن عبد الرحمن الأصفهاني المتوفى سنة ٧٤٩ هـ . طبع سنة ١٣٠٥ هـ ، ٤٧٠ .

(٩) شرح القصيدة الجزائرية : وهو خلاف عند الآمدي لها .

(١٠) السنوسي ، شرح القصيدة الجزائرية ، ورقة ٢٣٠ وب .

(١١) الأبي ، شرح صحيح مسلم ، ٥ : ١٥٩ .

أعطوهم حقوقهم واطلبوا حقوقكم من الله فان الله سائلهم عما استرعاهم . . . وذلك لما يترتب عليه من (١٩ب) عز الاسلام وإظهار الأحكام وقمع الأعداء والتشتيت يوجب ضد / ذلك (١) . ولا يجوز أيضا عزله إلا بكفر . وفى رائحة الجنة شرح إضاءة الدجنة : لا يجوز لنا صرف الامام عن إمامته وخلعه(٢) بسبب ما خلا الكفر من جميع المعاصى إذا ارتكبها من غير استحلال لا سرا ولا جهرا(٣) . وفى القصيدة الجزائرية :

ولا يكون بطار (٤)-الفسق منعزلا   الا بكفر فذا لا بد من بدل(٥)

وفي إضاءة الدجنة :

ولا يجوز عزله إن طرا   عليه فسق أو بغى واجترا (٦)
ولا الخروج عنه الا أن كفر   وحافر البغى هوى فيما حفر(٧)

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(١) ولى الدين بن أبى جمرة ، بهجة النفوس شرح مختصر صحيح البخارى ، ١ : ٣٠ .
(٢) رائحة الجنة : خلعه منها .
(٣) إضاءة الدجنة فى عقائد أهل السنة مع شرحها المسمى رائحة الجنة ، ١٦١ .
(٤) آ : بطارى الفسق .
(٥) (البسيط)
(٦) (الرجز)
(٧) اضاءة الدجنة ، ١٦١ .

(١٨ب) ونوابه لأن / طاعتهم (١) واجبة على جميع الرعايا بالظاهر والباطن ، لقوله تعالى : (أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الأَمْرِ مِنْكُمْ (٢)) . ولقوله عليه الصلاة والسلام من أطاع أميرى فقد أطاعني ومن عصى أميرى فقد عصاني (٣) . انتهى .

وفي الحديث : أوصيكم بتقوى الله العظيم والسمع والطاعة ولو لعبد حبشي(٤) رواه أبو داوود .
وقال أحمد الزروق : رتبة الولاة في ولايتهم أربعة أمور : السمع والطاعة ، وترك الخلاف عليهم وإن كانوا عصاة مذنبين ، والإعراض عن مساويهم وإن كانت ظاهرة ، والوقوف على أمرهم وإن أضروك(٥) . انتهى .

وأما تحريم الخروج عنه فقد قال تعالى : (وَاعْتَصِمُوا بِحَبْلِ اللَّهِ جَمِيعاً وَلاَ تَفَرَّقُوا(٦)) . وقال عليه الصلاة والسلام كما في صحيح مسلم عن ابن عمر : من خلع يداً من طاعة لقى الله يوم القيامة لا حجة (١٩أ) له ، ومن مات ليس (٧) في عنقه بيعة مات ميتة جاهلية (٨) . وقال / السبكي : لا يجوز الخروج عن السلطان ، هذا متفق عليه في العادل والمشهور في الجائر إلاّ في مذهب(٩) المعتزلة . وقال أحمد الزروق في قواعده : حِفْظُ النظام واجب ومراعاة المصلحة العامة واجبة لازمة فلذا أجمعوا على تحريم الخروج على (١٠) الامام بقول أو فعل حتى انجر في إجماعهم(١١) على الصلاة خلف كل بَرٍّ وفاجر من الولاة وغيرهم (١٢) . انتهى .

وقال ولى الله ابن أبي جمرة في بهجة النفوس شرح البخاري : إن(١٣) النبي صلى الله عليه وسلم أمر بحفظ البيعة وقال : وإن كان(١٤) ذا زبيبتين منفوح الخيشوم فاسمع وأطع وإن ضرب الظهر وأخذ المال. فقيل يارسول الله(١٥) أرأيت إن ولى علينا أمراء يطلبون حقوقهم ولا يعطونا حقوقنا ؟ فقال عليه السلام(١٦) :

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(١) اتحاف المريد : طاعته .
(٢) سورة النساء ، ٥٩ . وينقل اتحاف المريد الآية من أولها .
(٣) اللقاني ، اتحاف المريد بجوهرة التوحيد ، ١٦٥ .
(٤) ج : ولو عبدا حبشيا .
(٥) أحمد الزروق ، القواعد ، ٣٢ .
(٦) سورة آل عمران ، ١٠٣
(٧) صحيح مسلم : وليس .
(٨) صحيح مسلم ، ١٢ : ٢٤٠
(٩) ج : المذهب المعتزلة .
(١٠) أ و ب و الزروق : عن
(١١) د : انجروا إجماعهم .
(١٢) أحمد الزروق ، القواعد ، ٣٢
(١٣) ج : روى أن .
(١٤) بهجة النفوس : أسود ذا زبيبتين .
(١٥) ج تزيد : صلى الله عليه وسلم .
(١٦) ج : عليه الصلاة والسلام .

الفصل السادس

في وجوب نصب الامام ووجوب طاعته وتحريم الخروج عنه وعزله الا يكفر

فأقول وبالله التوفيق : فاعلم أن نصب الامام واجب على المسلمين شرعا إجماعا . قال عبد السلام بن ابراهيم اللَّقَّاني في إتحاف المريد شرح جوهرة التوحيد ، عند قول الناظم :

وواجب نصب امام عدل ... بالشرع فاعلم لا بحكم العقل[1]

أي اقامته وتوليته ، فيخاطب بذلك جميع الأمة من ابتداء موته عليه الصلاة والسلام[2] الى قيام الساعة . فاذا قام[3] به أهل الحل والعقد سقط عن غيرهم ، لا فرق في ذلك بين زمن الفتنة وغيره ، وهذا[4] مذهب أهل السنة ... ومتى أُطلِقت الامامة انصرفت للخلافة ، وهي رئاسة عامة في أمور الدين والدنيا نيابة عن النبي صلى الله عليه وسلم[5] .

(١٨ أ) وقال عند قوله بالشرع : يعني أن وجوب نصب الامام على الأمة[6] طريقه / الشرع عند أهل السنة . . . لوجوهٍ عمدتها إجماع الصحابة ، رضي الله عنهم حتى جعلوه أهم الواجبات واشتغلوا به[7] عن دفن النبي صلى الله عليه وسلم[8] . وكذا عقب موت كل[9] إمام الى وقتنا هذا ، واختلافهم في تعيين من يصلح خليفة غير قادح في اتفاقهم على وجوب نصبه ، ولذا لم يقل أحد منهم لا حاجة الى الامام[10] .

وفي السبكي : يجب على الناس نصب امام يقوم بمصالحهم[11] لإجماع الصحابة ، رضي الله عنهم بعد وفاة النبي صلى الله عليه وسلم حتى جعلوه أهم الواجبات ، ولم تزل الناس في كل عصر على ذلك ولو كان من ينصب مفضولا ، فان نصبه يكفي في الخروج عن عهدة النصب .

وأما وجوب طاعته فقد قال عبد السلام بن ابراهيم اللقاني في اتحاف المريد شرح جوهرة التوحيد عند قول الناظم ولا تزغ عن أمره المبين : أي الواضح الجاري على قوانين[12] الشريعة[13] ولا عن أمر خلفائه

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(١) (من الرجز)
(٢) ج و د : عليه السلام .
(٣) ب : أقام .
(٤) اتحاف المريد : هذا .
(٥) اللقاني ، اتحاف المريد بجوهرة التوحيد ، ١٦٤ .
(٦) د : الامامة .
(٧) به : ساقطة من ج .
(٨) ج : النبي عليه الصلاة والسلام . اتحاف المريد : رسول الله .
(٩) د : كل موت .
(١٠) اللقاني ، اتحاف المريد بجوهر التوحيد ، ١٦٤ .
(١١) ج : مصالحهم .
(١٢) ج : القوانين الشريعة .
(١٣) اتحاف المريد : الشرع .

واجب كالتواضع لله ولرسوله [1] وللحاكم[2] والعالم والوالد .

وحرام كالتواضع لأهل[3] الظلم والكفر [4] لأن التواضع لهؤلاء هو الذل الذى لا عزّ معه والخسة التى لا رفعة معها .

ومندوب كالتواضع لعباد الله سوى من ذكر .

ومفهوم المؤمنين أن الكفار لا تجوز[5] موالاتهم بالمعنى المذكور لقوله تعالى : (لَا تَجِدُ قَوْمًا يُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ يُوَادُّونَ مَنْ حَادَّ اللَّهَ وَرَسُولَهُ وَلَوْ كَانُوا آبَاءَهُمْ أَوْ أَبْنَاءَهُمْ أَوْ إِخْوَانَهُمْ أَوْ عَشِيرَتَهُمْ [6]) .

(١٧ب) بل يحتقرونهم[7] بالسوء ويقاتلونهم [8] إن كانوا حربيين[9] وإن كانوا من أهل الذمة / لا يعترض[10] لهم الا بقدر الحاجة ، لحرمة أذية[11] الذمى[12] . انتهى .

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(١) ج : ورسوله .

(٢) ب : والحاكم .

(٣) الفواكه الدوانى : لأهل النار والظلم والكفر .

(٤) ج : والكافر .

(٥) الفواكه الدوانى : لا يجوز .

(٦) سورة المجادلة ، ٢٢ .

(٧) الفواكه الدوانى : نقصدهم .

(٨) الفواكه الدوانى : ونقاتلهم على الايمان .

(٩) ج تزيد هنا : صواب العبارة والله أعلم بل يحتقروهم بالسوء ويقاتلونهم ان كانوا حربيين اذ الكلام فى صدد النية والجمع لا الخطاب والافراد .

(١٠) ج : يتعرض .

(١١) كل الأصول : إذاية . الفواكه الدوانى : أذية .

(١٢) النفراوى ، الفواكه الدوانى ، ٢ : ٣٨٤ .

الفصــل الخامس

في وجوب مــوالاة المؤمنين

فأقول وبالله التوفيق : إن موالاة المؤمنين واجبة على كل مسلم كتابا وسنة وإجماعا :

أما الكتاب فقوله تعالى : (وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ)(١) .

(١٦ب) وقال تعالى : (إِنَّمَا الْمُؤْمِنُونَ / إِخْوَةٌ فَأَصْلِحُوا بَيْنَ أَخَوَيْكُمْ)(٢) . وقال تعالى : (وَأَصْلِحُوا ذَاتَ بَيْنِكُمْ)(٣) .

وأما السنة فقد وردت في ذلك أحاديث كثيرة منها قوله عليه الصلاة والسلام كما في صحيح(٤) البخاري عن أنس : لا يؤمن أحدكم حتى يحب لأخيه ما يحب لنفسه(٥) . وفي صحيح مسلم عن أبي هريرة رضي الله عنه قال : قال رسول الله صلى الله عليه وسلم : لا تحاسدوا ولا تناجشوا ولا تباغضوا ولا تدابروا(٦) والحديث بطوله(٧) .

وأما الاجماع فقد اتفق أهل السنة رضي الله عنهم(٨) على وجوب موالاة المؤمنين . وفي الرسالة : وعلى المؤمن أن يستغفر لأبويه المؤمنين (٩) وعليه موالاة المؤمنين والنصيحة لهم ولا يبلغ أحد حقيقة الايمان (١٧أ) حتى يحب لأخيـه (١٠) ما يحب لنفسه . كذلك روى عن رسول الله صلى الله عليه وسلم (١١) . / وفي الفواكه الدواني : المراد بموالاتهم الاجتماع عليهم وإظهار المحبة لهم واجتناب ما يوجب المنافرة من الغل الحسد(١٢) والعياذ بالله تعالى . وليس المراد الاجتماع (١٣) بالأبدان العاري عن المحبة القلبية .

وأعلم أن لين الجانب المعروف بالتواضع على ثلاثة أقسام :

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(١) سورة التوبة ، ٧١ .
(٢) سورة الحجرات ، ١٠ .
(٣) سورة الأنفال ، ١ .
(٤) ج : الصحيح .
(٥) صحيح البخاري ، ١ : ١١ .
(٦) صحيح مسلم ، ١٦ : ١٢٠ .
(٧) د : وبطوله .
(٨) ج : عنه .
(٩) ج : المؤمن .
(١٠) د تزيد : المؤمن .
(١١) الرسالة ، ١٧٧ .
(١٢) د : فالحسد .
(١٣) الفواكه الدواني : وليس المراد بموالاتهم مجرد الاجتماع .

وجعل الكافرين بعضهم أولياء بعض . ثم قال تعالى : (إلاَّ تَفْعَلُوهُ) وهو أن يتولى المؤمن الكافرين دون المؤمنين[1] (تَكُنْ فِتْنَةٌ فِي الأَرْضِ وَفَسَادٌ كَبِيرٌ) .

(١٥ب) فالفتنة في الأرض هي قوة الكفار والفساد الكبير هو ضعف المسلمين[2] / وقال تعالى : (لاتَجِدُ قَوْماً يُؤْمِنُونَ بِاللهِ وَالْيَوْمِ الآخِرِ يُوَادُّونَ مَنْ حَادَّ اللهَ وَرَسُولَهُ وَلَوْ كَانُوا آبَاءَهُمْ أَوْ أَبْنَاءَهُمْ أَوْ إِخْوَانَهُمْ أَوْ عَشِيرَتَهُمْ[3]) بل يقصدونهم بالسوء ويقاتلونهم على الايمان ، كما وقع لجماعة من الصحابة[4] كما في تفسير جلال الدين المحلي . وقال تعالى : (يَاأَيُّهَا الَّذِينَ آمَنُوا لا تَتَّخِذُوا عَدُوِّي وَعَدُوَّكُمْ أَوْلِيَاءَ تُلْقُونَ إِلَيْهِم بِالْمَوَدَّةِ[5]) بينكم وبينهم[6] كما في تفسير جلال الدين المحلي .

وأما السنة فقد وردت أحاديث كثيرة في نهي موالاة الكفار . منها قوله عليه الصلاة والسلام : المؤمن والكافر لا تتراءى ناراهما[7] . قال العلماء معناه أنهما[8] لا يمكن التودد بينهما ولا المناصحة ولا المساكنة ، قاله سيدنا مختار بن أحمد بن أبي بكر الكنتي في النصيحة الكافية .

(١٦أ) وأما الإجماع فقد اتفق علماء[9] السنة على تحريم / موالاة الكفار الا في وقت المخافة لقوله تعالى : (إلاَّ أَنْ تَتَّقُوا مِنْهُمْ تُقَاةً[10]) . وفي التكملة تفسير عبد الرحمن السيوطي أي تخافوهم[11] مخافة فلكم موالاتهم باللسان دون القلب . وهذا قبل عزة الاسلام ويجرى[12] في بلد ليس قويا فيها[13] . وفي تفسير الخازن : والتقية لا تكون إلا مع خوف القتل مع سلامة النية . . . ثم هذه التقية رخصة فلو صبر . . . حتى قتل كان له بذلك أجر عظيم . ثم قال وأنكر قوم التقية اليوم وقالوا : إنما كانت التقية في جدة الاسلام قبل استحكام الدين وقوة المسلمين . وأما اليوم فقد أعز الله الاسلام والمسلمين ، فليس لأهل الاسلام أن يتقوا من عدوهم[14] . انتهى .

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(١) هكذا في ب و د . وفي ا : أي تولي المؤمنين وقطع الكفار . وفي ج : وهو أن يتولى المؤمن الكافر دون المؤمن . وفي الخازن : وهو أن يتولى المؤمن الكافر دون المؤمنين. وهذا تفسير لمضمون الآية وأوضح منه ما في الجلالين : أي تولي المؤمنين وقطع الكفار . أوما في روح المعاني للآلوسي : أي الا تفعلوا ما أمرتم به في الآيتين .

(٢) تفسير الخازن ، ٢ : ١٩٨ .

(٣) سورة المجادلة ، ٢٢ .

(٤) تفسير الجلالين ، ٢ : ٢٣٢ .

(٥) سورة الممتحنة ١ .

(٦) تفسير الجلالين ، ٢ : ٢٣٥ .

(٧) الزمخشري ، الفائق في غريب الحديث ، ١ : ٤٤٢ .

(٨) د : أنه .

(٩) د : العلماء السنة .

(١٠) سورة آل عمران ، ٢٨ .

(١١) الجلالين : أي تخافوا مخافة .

(١٢) يجرى : ساقطة من آ .

(١٣) تفسير الجلالين ، (١ : ٥٢) : ويجرى في من هو في بلد ليس قويا فيها .

(١٤) تفسير الخازن ، ١ : ٢٠٩ .

الفصـــل الرابع

فى تحريم مولاة الكافرين

فأقول وبالله التوفيق إن موالاة الكفار محرمة كتابا وسنة وإجماعا :

أما الكتاب فقوله تعالى : (لَايَتَّخِذِ الْمُؤْمِنُونَ الْكَافِرِينَ أَوْلِيَاءَ مِن دُونِ الْمُؤْمِنِينَ وَمَن يَفْعَلْ ذَٰلِكَ فَلَيْسَ مِنَ اللهِ فِي شَيْءٍ [1]) أى[2] من دين الله [3] كما فى التكملة تفسير عبد الرحمن السيوطى، وقال تعالى : (يَـٰأَيُّهَا (ه) الَّذِينَ آمَنُوا لَاتَتَّخِذُوا الْكَافِرِينَ أَوْلِيَاءَ مِن دُونِ الْمُؤْمِنِينَ أَتُرِيدُونَ أَن تَجْعَلُوا لِلَّهِ عَلَيْكُمْ سُلْطَانًا مُّبِينًا [4]) : برهانا بيّنا على نفاقكم [5] كما فى التكملة تفسير عبد الرحمن السيوطى ، وقال تعالى (ه) : (وَمَن يَتَوَلَّهُم مِّنكُمْ فَإِنَّهُ مِنْهُمْ [6]) وفى مدارك التنزيل : فحكمه حكمهم. ثم قال : وهذا تغليظ من الله تعالى وتشديد فى (١٥ أ) وجوب مجانبة المخالف فى الدين [7]، وقال تعالى : (يَـٰأَيُّهَا الَّذِينَ آمَنُوا لَاتَتَّخِذُوا الَّذِينَ / اتَّخَذُوا دِينَكُمْ هُزُوًا وَلَعِبًا مِّنَ الَّذِينَ أُوتُوا الْكِتَابَ مِن قَبْلِكُمْ وَالْكُفَّارَ أَوْلِيَاءَ وَاتَّقُوا اللهَ إِن كُنتُم مُّؤْمِنِينَ[8]. قال المفسرون فى بيان معنى هذه الآية : وقد رتب النهى عن موالاتهم عن[9] اتخاذ دينهم هزوا[10] إيماء على [11] العلة وتنبيها على أن من هذا شأنه بعيد عن الموالاة جدير بالمعاداة[12] . وقال تعالى : (إِلَّا تَفْعَلُوهُ) أى تولى المؤمنين وقطع الكفار (تَكُن فِتْنَةٌ فِي الْأَرْضِ وَفَسَادٌ كَبِيرٌ[13]) بقوة الكفر وضعف الاسلام[14] . كما فى التكملة تفسير عبد الرحمن السيوطى . وفى تفسير الخازن قال ابن اسحاق : جعل[15] الله المهاجرين والأنصار أهل ولاية فى الدين دون سواهم،

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(١) سورة آل عمران ، ٢٨ .

(٢) د تحذف : أى .

(٣) تفسير الجلالين ، ١ : ٥٢ .

(ه) .... (ه) ساقطة من ج .

(٤) سورة النساء ، ١٤٤ .

(٥) تفسير الجلالين ، ١ : ١٠٤ .

(٦) سورة المائدة ، ٥١ .

(٧) مدارك التنزيل للنسفى (هامش تفسير الخازن) ١، ٤٤٨:١.

(٨) سورة المائدة ، ٥٧ .

(٩) هكذا فى كل الأصول ولكنه فى البيضاوى « على » وهو المناسب لتعلقه بالفعل (رتب) .

(١٠) ولعبا : زيادة فى البيضاوى .

(١١) هكذا فى كل الأصول وهو فى البيضاوى « إلى » وهو المناسب لتعلقه بالمصدر قبله .

(١٢) تفسير البيضاوى ، ١١٨ .

(١٣) سورة الأنفال ، ٧٣ .

(١٤) تفسير الجلالين ، ١ : ١٦٤ .

(١٥) د : وجعل .

أصاب من[1] قبلكم من أتباع الأنبياء والرسل من الشدائد والمحن والابتلاء والاختبار (٢) . وقال قبل هذا الكلام بقليل : لما دخل رسول الله صلى الله عليه وسلم وأصحابه المدينة فى أول الهجرة ، اشتد عليهم الضر (١٤ أ) لأنهم خرجوا بلا مال وتركوا أموالهم وديارهم بأيدى المشركين / وآثروا رضا الله ورسوله وأظهرت اليهود العداوة لرسول الله صلى الله عليه وسلم وأسرّ[3] قوم النفاق فأنزل الله هذه الآية تطيبا لقلوبهم[4] . انتهى .

ومثل هذا ما قاله المفسرون إنه روى عن ابن عباس أنه قال : وسبب نزول قوله تعالى : إِنَّ الَّذِينَ تَوَفَّاهُمُ الْمَلَائِكَةُ ظَالِمِي أَنْفُسِهِمْ قَالُوا فِيمَ كُنْتُمْ قَالُوا كُنَّا مُسْتَضْعَفِينَ فِي الْأَرْضِ قَالُوا أَلَمْ تَكُنْ أَرْضُ اللهِ وَاسِعَةً فَتُهَاجِرُوا فِيهَا فَأُولَئِكَ مَأْوَاهُمْ جَهَنَّمُ[5]) : كان قوم من أهل مكة أسلموا وكانوا يخفون الاسلام فأخرجهم المشركون معهم يوم بدر فأصيب بعضهم ، فقال المسلمون فاستغفروا لهم فنزلت الآية فكتبوها ، وأرسلوها الى من بقى مع الكفار من المسلمين ليعلموا أنه لا عذر لهم ، فخرجوا ، فلقيهم الكفار ففتنوهم فرجعوا فنزل : (وَمِنَ النَّاسِ مَنْ يَقُولُ آمَنَّا (١٤ب) بِاللهِ فَإِذَا أُوذِيَ فِي اللهِ جَعَلَ فِتْنَةَ النَّاسِ كَعَذَابِ اللهِ) [6] . فكتبت/ [7] اليهم فخرجوا فلقوهم فنجا من نجا وقُتل من قُتل[8] . انتهى .

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(١) الخازن : من كان قبلكم .
(٢) تفسير الخازن ، ١ : ١٢٦ .
(٣) الخازن : وآثر .
(٤) تفسير الخازن ١ : ١٢٦ .
(٥) سورة النساء ، ٩٧ .
(٦) سورة العنكبوت ، ١٠ .
(٧) ج : فكتب وأرسل اليهم .
(٨) جاء هذا فى تفسير القرآن لابن كثير باختلاف يسير فى النص . انظر ، ١ : ٥٤٢ .

الفصل الثالث

في ثناء الله تعالى على المهاجرين الذين خرجوا من ديارهم وتركوا أموالهم للكفار وعرضوا أنفسهم للبأساء والضراء والقتل من أجل الهجرة وثنائه على الأنصار الذين آووهم ونصروهم وما وعد لهم على ذلك

فأقول وبالله التوفيق : قد وردت في ذلك آيات كثيرة . قال تعالى :(١) (للفقراء المهاجرين (١٣ أ) / الذين أخرجوا من ديارهم وأموالهم يبتغون فضلاً من الله ورضواناً وينصرون الله ورسوله أولئك هم الصادقون والذين تبوءوا الدار والإيمان من قبلهم يحبون من هاجر إليهم ولا يجدون في صدورهم حاجة مما أوتوا ويؤثرون على أنفسهم ولو كان بهم خصاصة(٢)) . وقال تعالى : (والسابقون الأولون من المهاجرين والأنصار والذين اتبعوهم بإحسان رضي الله عنهم ورضوا عنه وأعد لهم جنات تجري (٣) تحتها الأنهار خالدين فيها أبداً ذلك الفوز العظيم(٤)) . وقال تعالى : (والذين آمنوا وهاجروا وجاهدوا في سبيل الله والذين آووا ونصروا أولئك هم المؤمنون حقاً لهم مغفرة ورزق كريم(٥)) . وقال تعالى : (ومن يخرج من بيته مهاجراً إلى الله ورسوله ثم يدركه الموت فقد وقع أجره على الله وكان الله غفوراً (١٣ب) رحيماً(٦)) . وقال تعالى : (فالذين هاجروا وأخرجوا من ديارهم وأوذوا / في سبيلي وقاتلوا وقتلوا لأكفرن عنهم سيئاتهم ولأدخلنهم جنات تجري من تحتها الأنهار ثواباً من عند الله والله عنده حسن الثواب(٧)) .

هذه الآيات دلت على أن كل من هاجر لا بد له من مس البأساء والضراء(٨) قال تعالى : (أم حسبتم أن تدخلوا الجنة ولما يأتكم مثل الذين خلوا من قبلكم مستهم البأساء والضراء(٨) وزلزلوا حتى يقول الرسول والذين آمنوا معه متى نصر الله(٩)) . وفي تفسير الخازن : ومعنى الآية أظننتم . . . أيها المؤمنون أن تدخلوا الجنة بمجرد الإيمان ولم يصبكم ما(١٠)

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(١) ب تزيد : أي أعجبوا .

(٢) سورة الحشر ، ٨ ، ٩ .

(٣) أ و ج : من تحتها . وهي قراءة ابن كثير .

(٤) سورة التوبة ، ١٠٠ .

(٥) سورة الأنفال ، ٧٤ .

(٦) سورة النساء ، ١٠٠ .

(٧) سورة آل عمران ، ١٩٥ .

(٨) . . . . (٨) ساقطة من : ب .

(٩) سورة البقرة ، ٢١٤ .

(١٠) الخازن : مثل ما أصاب .

هذا المقيم ببلد الحرب إن كان اضطرارا فلا شك أنه لا يقدح فى عدالته وكذلك إن كان تأويله صحيحا مثل اقامته . . . لرجاء هداية أهل الحرب . . . وأما لو أقام بحكم الجاهلية والإعراض عن التأويل اختيارا فلا شك أنه يقدح فى عدالته . . . ومن ظهرت عدالته وشك فى إقامته على أى وجه ، فالأصل عذره . . . (١٢ب) الا أن تكون قرائن تشهد على أن إقامته كانت إختيارا . . . وتولية الكافر للقاضى / باطلة ومع ذلك لا يقدح فى تنفيذ أحكامه إذ حجر الناس بعضهم بعضا واجب[١] . انتهى .

قلت هذا كله فيمن لم يقاتل الكفار حتى غلبهم وقدر على إظهار الدين وصار البلد به دار الاسلام إذ[٢] قال القسطلانى فى الارشاد شرح البخارى : قال الماوردى إذا قدر على إظهار الدين فى بلد من بلاد الكفر[٣] فقد صارت البلد به دار الاسلام فالإقامة فيها[٤] أفضل من الرحلة لما يرجى[٥] من دخول غيره فى الاسلام[٦] انتهى .

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(١) المعيار ، ١ : ورقة ١٠٠ ظهر . ، وانظر ه : ورقة ٢٠٢ وجه . وعبارة المعيار فيها كثير من الاختلاف فى الألفاظ . هذا ولم نجد نصوصا أخرى نقلها الشيخ عثمان بن فودى من المعيار الونشريسى فى الفصول التالية من بيان وجوب الهجرة . . ١١-٢١-٣٦ - ٣٩-٤١-٤٨-

(٢) ب : اذا .

(٣) د : الكفار .

(٤) القسطلانى : فيه .

(٥) القسطلانى : يترجى .

(٦) القسطلانى : ارشاد السارى لشرح صحيح البخارى ، ٦ : ٢١٣ .

ثم قال : ويجاب عن[١] هذا بأن المراد من الهجرة المخصوصة، الهجرة من مكة الى المدينة ، فأما من كان من المؤمنين في بلد يخاف على إظهار دينه من الكفار[٢] وجب عليه أن يهاجر الى بلد لا يخاف فيه على إظهار دينه[٣] .

(١١ب) وقال القسطلاني في الارشاد شرح / البخاري : مادام في الدنيا دار الكفر [٤] فالهجرة منها واجبة ، . . . والحكم يدور مع علته [٥] . انتهى .

ويدل على ذلك قوله عليه الصلاة والسلام : لا تنقطع الهجرة حتى تنقطع التوبة ولا تنقطع التوبة حتى تطلع الشمس من المغرب ، رواه أبو داوود عن معاوية . وفي ابن عبد السلام : الهجرة تجب في آخر الزمان كما تجب في أول الاسلام . انتهى .

فان قلت هل يصح اسلام من أسلم في بلد الكفر ولم يهاجر ؟ قلت : جوابه كما قال[٦] النفراوي في الفواكه الدواني شرح الرسالة : لم يبين المصنف حكم من أسلم من الحربيين ، هل يجوز لهم البقاء في دار الحرب أو يهاجرون[٧] منها الى بلاد الاسلام ؟ وبيّنه غيره بقوله : ولو أسلم قوم كفار فان كانوا حيث تنالهم أحكام الكفار وجب عليهم الارتحال منهم [٨] ، فان [٩] لم يرتحلوا يكونون[١٠] عاصين لله ورسوله واسلامهم صحيح[١١] . انتهى.

(١٢أ) وكما لا يختلف اثنان [١٢] أن المقيم ببلد / الحرب اختيارا عاصٍ لله ورسوله لا يختلفان أيضا أن شهادته لا تجوز . وفي المعيار : لا تجوز شهادة الدجن[١٣] وقضاتهم لأنهم رضوا أن يكونوا تحت إيالة النصارى. وفيه أيضا سئل المازري عن[١٤] أحكام تأتي من صقلية[١٥] من عند[١٦] قاضيها أو شهود عدول هل يقبل ذلك أو لا ؟ . . . ولا ندري إقامتهم هناك تحت أهل الكفر هل هي اضطرار أو اختيار ؟ فأجاب . . .

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(١) ج : على .
(٢) الخازن : كثرة الكفار .
(٣) تفسير الخازن ، ٢ : ١٩٨ .
(٤) القسطلاني : كفر .
(٥) القسطلاني ، إرشاد الساري لشرح صحيح البخاري ، ٦ : ٢١٣ .
(٦) هناك ورقة مفقودة من الاصل وهي تبدأ من كما قال . . . . الى « وصار البلد به دار الاسلام » في نهاية الفصل الثاني .
(٧) الفواكه الدواني : يهاجر .
(٨) الفواكه الدواني : منه .
(٩) الفواكه الدواني : وان .
(١٠) الفواكه الدواني : منه يكونوا . أ : يكونوا .
(١١) النفراوي ، الفواكه الدواني ، ١ : ٤٦٥ .
(١٢) ج : الاثنان .
(١٣) الدجن هو من يسكن ديار الكفر دون عذر (المحقق)
(١٤) ج : ان .
(١٥) ب و ج : صقيلة .
(١٦) أ : أو . ب : من ، بدلا (من عند) .

الفصـــل الثـــاني

في تأويل قوله عليه الصلاة والسلام : لا هجرة بعد الفتح

فأقول وبالله التوفيق : ورد في صحيح البخاري عن ابن عباس قال : قال النبي صلى الله عليه وسلم يوم فتح (١٠ب) مكة : لا هجرة بعد الفتح[١] . وفي صحيح البخاري أيضا عن/مجاشع بن مسعود قال: جاء مجاشع بأخيه مجالد بن مسعود الى النبي صلى الله عليه وسلم[٢] فقال: هذا مجالد يبايعك على الهجرة فقال : لا هجرة بعد فتح مكة[٣]. وفي صحيح البخاري أيضا قال عمرو بن دينار[٤] وابن جريج سمعت[٥] عطاء يقول : ذهبت مع عبيد بن عمير الى عائشة وهي مجاورة بثبير فقالت لنا : انقطعت الهجرة منذ فتح الله على نبيه مكة[٦] . اما تأويل قـوله عليه الصلاة والسلام : لا هجرة بعـد الفتح . فقـد قال العلماء : أي[٧] لاهجرة من مكة بعد الفتح ، بعد أن صارت دار الاسلام[٨] . وفي تفسير الخازن عند قوله تعالى : (إِنَّ الَّذِينَ تَوَفَّاهُمُ الْمَلَائِكَةُ ظَالِمِي أَنْفُسِهِمْ)[٩] : يعني بالشرك ،وقيل بالمقام في دار الشرك ، وذلك (١١أ) لأن الله لم يقبل الاسلام من أحد بعد هجرة النبي صلى الله / عليه وسلم حتى يهاجر اليه ثم نسخ ذلك بعد فتح مكة ، بقوله[١٠] صلى الله عليه وسلم : لا هجرة بعد الفتح . . . أخرجاه في الصحيحين[١١]. وفي تفسير الخازن أيضا في سورة الأنفال عند قوله تعالى : (وَالَّذِينَ آمَنُوا مِنْ بَعْدُ وَهَاجَرُوا وَجَاهَدُوا مَعَكُمْ[١٢]) اختلفوا في قوله : (مِنْ بَعْدُ)، فقيل من بعد صلح الحديبية، وهي الهجرة الثانية،وقيل من بعد نزول هذه الآية ، وقيل من بعد غزوة بدر ثم قال: والأصح أن المراد به أهل الهجرة الثانية لأنها بعد الهجرة الأولى ، لأن الهجرة الاولى انقطعت بعد فتح مكة لأنها صارت دار الاسلام[١٣] بعد الفتح . ويدل عليه قوله صلى الله عليه وسلم: لاهجرة بعد الفتح . . . وقال الحسن : الهجرة غير منقطعة .

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(١) صحيح البخاري ، ٤ : ١٨ .
(٢) د : عليه الصلاة والسلام .
(٣) صحيح البخاري ، ٤ : ٩٢ .
(٤) ابن دينار : ليس بالبخاري .
(٥) ج ود : سمعنا .
(٦) صحيح البخاري ، ٤ : ٩٢
(٧) ج ود تحذفان : أي .
(٨) ج : السلام .
(٩) سورة النساء ، ٩٧ .
(١٠) أ و ج و د : لقوله . وما اثبتناه عن ب و الخازن .
(١١) تفسير الخازن ، ١ : ٣٧١ وانظر صحيح مسلم ١٣ : ٨، وصحيح البخاري ، ٤ : ٢٨ وتمام الحديث في الصحيحين : ولكن جهاد ونية ، واذا استنفرتم فانفروا .
(١٢) سورة الأنفال ، ٧٥ .
(١٣) ج : السلام . الخازن : اسلام .

عليكم يا إخواني بالهجرة من بلاد الكفر الى بلاد[1] الاسلام لتفوزوا بالجنة ، وتكونوا رفيق أبيكم إبراهيم [2] ونبيكم محمد [3]، لقـــوله عليه الصلاة والسلام : من فرّ بدينه من أرض الى أرض وان كان شبرا من أرض استوجب [4] الجنة وكان رفيق ابراهيم ونبيه محمد صلوات الله وسلامه عليهما [5] انتهى .

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(١) د : بلد .
(٢) عليه السلام : زيادة فى ج .
(٣) صلى الله عليه وسلم : زيادة فى ج .
(٤) ج : استوجبت. البيضاوى : استوجبت له الجنة .
(٥) ورد هذا الحديث فى تفسير البيضاوى ٤ د ٩ .

الصحة (١) ، فلو بحثتم الآن لا تجدون أحدا يخبركم بحقيقة ما قال فما انبنى على كلامه لا يعتبر(٢) . .
والذى يظهر ويغلب على الظن أنه غير صحيح (٣) .

فان قلت ما حد بلاد السودان ؟ قلت : لم أقف على من تعرض لذكر مبدئها وآخرها . لكن قال إمام (٩ب) الحفظة ولى الدين ابن / خلدون فى التاريخ الكبير له فى أخبار ملوك السودان المجاورين للمغرب : ومن شعوب السودان تاجرة ، ويليهم الكانم(٤) . . ويليهم من غربيهم كَوْكَوْ ، وبعدهم (تفاوة) التكرور .(٥)
وقال أيضا لما تكلم عن أصناف السودان فى السفر الرابع : والحبشة أعظم أمم السودان(٦) . انتهى .

وما ذكرناه من أول هذا الفصل من أن الهجرة من بلاد الكفار واجبة على جميع(٧) المسلمين ، لا يختلف فيه اثنان ، ولا عذر لأحد فى تركها ، إلاّ المستضعفين قال تعالى : (إلا الْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ لاَ يَسْتَطِيعُونَ حِيلَةً)(٨) لا قوة لهم على الهجرة ولا نفقة (وَلاَ يَهْتَدُونَ سَبِيلاً)(٨)) طريقا الى ارض الهجرة(٩) كما فى التكملة (١٠) تفسير عبد الرحمن السيوطى . وفى تفسير الخازن فى بيان معنى قوله : (لاَيَسْتَطِيعُونَ حِيلَةً) يعنى لا يقدرون على حيلة ، ولا نفقة ولا قوة لهم (١٠أ) على الخروج (من مكة)(١١) وقال تعالى فى حق هؤلاء : (فَأُولَئِكَ / عَسَى اللهُ أَنْ يَعْفُوَ عَنْهُمْ(١٢)) قال المفسرون : ذُكِر بكلمة(١٣) الاطماع ولفظ العفو إيذانا بأن ترك الهجرة أمر خطر(١٤) حتى ان المضطر من حقه أن لا يأمن ويترصد الفرضية (١٥) ويعلق بها قلبه (١٦) . انتهى .

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(١) الكشف والبيان : الى غير الحق .
(٢) الكشف والبيان : فما انبنى عليه كلامه ملغى .
(٣) الكشف والبيان : والذى يظهر بل يكاد يجزم به أنه غير صحيح ، انظر الورقة الأولى ، ظهر .
(٤) الكشف والبيان : كانم .
(٥) (تفاوة) زيادة من الكشف والبيان الذى نقل منه ابن فودى كلام ابن خلدون (انظر الورقة الثانية ، وجه) واغلب الظن ان (تفاوة) تصحيف لاسم (وتفاوة) الذى ذكره الادريسى فى كتابه نزهة المشتاق ووصفه ببلاد التبر .
(٦) الكشف والبيان ، الورقة الرابعة ، وجه .
(٧) جميع : ليس فى د
(٨) سورة النساء ، ٩٨ .
(٩) تفسير الجلالين ، ١ : ٩٨ .
(١٠) ج : تكملة .
(١١) الزيادة (من مكة) من تفسير الخازن ، ١ : ٣٧١ .
(١٢) سورة النساء ، ٩٩ .
(١٣) ب : بكلمات .
(١٤) البيضاوى : خطير .
(١٥) هكذا فى كل الاصول وفى البيضاوى : الفرصة .
(١٦) تفسير البيضاوى ، ٩٥ .

ظلمات الجهل والهوى والكفر ولذا نُهِيَ (عن [١]) السفر الى أرض العدو وبلاد السودان .

(٨ب) وقال أبو الحسن / المالكي فى تحقيق المبانى شرح الرسالة عند قول المصنف : وتكره التجارة الى أرض العدو وبلد السودان[٢] : يعنى الكفار منهم ، وكأنه قال : تكره التجارة الى أرض العدو كانوا سودانا أو غيرهم ، ثم قال : وقال الداوودى[٣] أما بلاد السودان فقيل المراد بها بلاد الكفر منها[٤] . انتهى .

وهذا القول يُشعر أن من بلاد السودان بلاد الكفر وبلاد الاسلام كما مرت الاشارة اليه وهو ظاهر قول أحمد بابَ[٥] فى كتاب الكشف والبيان لأصناف مجلوب السودان[٦] . ولكن رأيت فى تصنيف بعض العلماء ما يفيد أن بلد الاسلام معدوم فى بلاد السودان أصلا حيث قال : قد تداول على إبطال شريعة نبينا محمد صلى الله عليه وسلم سلاطين بلاد السودان التى هى بلاد الكفر ، لا هى من بلاد الاسلام فى شىء انتهى . والله أعلم .

(٩أ) فان قلت : هل من أسلم من أهل السودان حصل اسلامهم بالاستيلاء عليهم أو أسلم طوعا / قلت جوابه كما قال الشيخ أحمد بابَ فى كتاب الكشف والبيان لأصناف مجلوب السودان : إنهم أسلموا بلا إستيلاء أحد عليهم [٧] .

وقال فيه فى محل آخر : والذى يظهر من كلام ابن خلدون وغيره أن من أسلم من أهل السودان أسلم طوعا[٨] بلا استيلاء أحد عليهم وقال فيه[٩] أيضا : قد أخبر بعض قضاة السودان أن الامام الذى افتتحهم وهم كفار اختار إبقاءهم (أرقاء) [١٠] .

ثم قال الشيخ أحمد بابَ : هذا ما سمعنا به أصلا وما بلغنا[١١] واسألوا هذا القاضى السودانى : من هذا الامام ؟ وفى أى وقت فتح بلادهم ؟ وأيـة بلاد فتح ؟ بيّن لكم ذلك كله[١٢]. وما أقرب كلامه لعدم

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(١) زيادة ليست فى النصوص كلها وإنما اقتضاها السياق .
(٢) الرسالة ، ١٩١ .
(٣) ا : وقال دوا . ب : وقال أبى أحمد الزروق . ح : وقال دو .
(٤) لم نعثر على العبارتين فى تحقيق المبانى .
(٥) د : ابن باب .
(٦) انظر الكشف والبيان ، الورقة الأولى ، وجه ، والثانية ظهر .
(٧) الكشف والبيان ، الورقة الأولى ظهر .
(٨) الكشف والبيان : «من مقتضى كلام ابن خلدون وغيره أنهم أسلموا طوعا» .
(٩) د : عليه .
(١٠) الزيادة من الكشف والبيان الورقة الاولى ، ظهر . والمعروف أن الامام فى شأن الأسرى له الخيار بين الاسترقاق أو المن أو الفداء (المحقق) .
(١١) الكشف والبيان : ما سمعت به أصلا وما بلغت .
(١٢) الكشف والبيان : يبين لكم تلك البلاد .

كما مثل به أحمد بابَ فى كتاب الكشف والبيان لأصناف مجلوب السودان (١) . وهذه كلها بلاد كفر (٧ب) بلا شك / اذ(٢) الحكم للغالب. وسلاطين هذا القسم أيضا كفار كلهم وحكم البلد حكم سلطانه كما سيأتى بيانه ان شاء الله تعالى .

وقسم منها غلب فيه الإسلام وكان الكفر فيه نادرا كبلد برنو ، وبلد كن ، وبلد كشن ، وبلد سغى ، وبلد مسلى ، كما مثل به أحمد بابَ أيضا فى الكتاب المذكور (٣) .وهذه أيضا بلاد كفر (٤) بلا شك إذ (٥) الإسلام المستفيض فيها فى غير سلاطينها وأما سلاطينها فكفار كالقسم الأول ، وان كانوا يدينون بدين الاسلام لأنهم أهل شرك وصد عن سبيل الله،وإعلاء راية ملك الدنيا على راية الإسلام، وذلك كله كفر(٦) على الإجماع . وحكم البلد حكم سلطانه بلا خلاف ،.إن كان مسلما كان البلد بلد إسلام(٧) وان(٨) كان كافرا كان البلد بلد كفر يجب القرار منه إلى غيره . ولذلك (٩) قال أحمد بن سعيد (١٠) فى مختصر إكمال الإكمال للأُبّى : لا خلاف أنه (١١) يجب على المسلمين عـزل إمامهم اذا كان كافرا ، وانما يجب (٨أ)قيامهم / عليه اذا تخيلوا القدرة عليه . وان تحققوا العجز عنه لم يجب القيام عليه وانما يجب على كل مسلم فى أرضه الهجرة منها الى غيرها(١٢) . انتهى .

وما ذكرناه من أن سلاطين(١٣) هذا القسم كفار، مبنى على الغالب المعهود فيهم ، ولا يمنع أن يكون بعضهم مسلما على الندور ، ولا حكم للنادر .

وقسم منها ليس من بلاد الكفار باعتبار السلاطين وغيرهم بل من بلاد الاسلام مطلقا ، وهذا القسم مما لا نعرفه فى بلاد السودان ولكنه يفهم من كلام العلماء كما سيأتى ان شاء الله تعالى .

وقال سيدنا مختار بن أحمد الكنتى فى النصيحة الكافية : بلد السودان بلد قد غلب على أكثر أهلها الكفر، ومن فيها(١٤) من المسلمين تحت قهر الكفرة قد اتخذوهم أمراء والناس يعملون بعمل أميرهم غالبا ، وهم فى

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(١) أحمد باب ، كتاب الكشف والبيان لأصناف مجلوب السودان ، انظر الورقة الأولى والثانية . الا أن أحمد باب كما ترى من مخطوطة رباط وباريس ثم يقسم بلاد السودان على هذا النحو . (انظر تعليقنا على الترجمة الانجليزية لهذا الكتاب) .
(٢) ج : اذا .
(٣) انظر احمد باب الكشف والبيان ، الورقة الثانية ، ظهر .
(٤) د : الكفر .
(٥) ج : اذا .
(٦) كفر : ليس فى ج .
(٧) أ و د : الاسلام .
(٨) د : ان .
(٩) ج و د : وكذلك .
(١٠) ج : سعد .
(١١) د : فى أنه .
(١٢) النص فى اكمال الاكمال للأبى ، ٥ : ١٨٠ ولم نعثر على مختصر أحمد بن سعيد .
(١٣) د : السلاطين .
(١٤) ا : ومن كان فيها .

كما في التكملة تفسير عبد الرحمن السيوطي (فَتَرَبَّصُوا حَتَّى يَأْتِيَ اللَّهُ بِأَمْرِهِ) (١) وفي تفسير الخازن أن سبب نزول هذه الآية قول الذين أسلموا ولم يهاجروا : إن نحن هاجرنا ضاعت أموالنا وذهبت تجارتنا وخربت دورنا وقطعنا أرحامنا . ثم قال : وفي هذه(٢) الآية دليل على أنه اذا وقع تعارض بين مصالح الدين ومصالح الدنيا وجب على المسلم ترجيح مصالح الدين على مصالح الدنيا(٣) . انتهى .

قلت: كما يجب ترجيح حفظه على باقي الكليات الخمس(٤) التي هي : حفظ النفس والعقل، والنسب، والمال وألحق بعضهم العرض . قال عبد السلام بن ابراهيم اللقاني في إتحاف المريد شرح جوهرة (٧ أ) التوحيد / عند قول الناظم :

وحفظ دين (٥) نفس مال ، نسب ومثلها عقل وعرض قد وجب

وآكد الخمسة الدين ، لأن حفظ غيره وسيلة لحفظه (٦) ، ثم حفظ النفوس(٧) ، ثم العقول ، ثم الأنساب ، ثم الأموال ، وفي مرتبتها الأعراض ان لم تؤدّ الأذية (٨) فيها الى قطع النسب ، والا كانت في مرتبة الأنساب . ثم قال : قد وجب حفظ الجميع في جميع الشرائع لشرفها(٩) . انتهى .

واذا فهمت ما تقدم ذكره عرفت أن الهجرة من بلاد الكفار واجبة كتابا وسنة واجماعا ، ومنها معظم بلاد السودان ، إذ بلادها على ثلاثة أقسام كما يفهم من كلام العلماء رضي الله عنهم :

قسم منها(١٠) غلب فيه الكفر وكان الاسلام فيه نادرا ، كبلد(١١) موش، وبلد غرم ،وبلد(١٢) بس، وبلد برغ ، وبلد يرب ، وبلد دغمب(١٣)، وبلد كتكل، وبلد تنبغ ، وبلد بوبل(١٤)، وبلد غمبي ،

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(١) سورة التوبة ، ٢٤ .
(٢) الخازن : وفي هذا ؛ مع حذف الآية .
(٣) ج تحذف : على مصالح الدنيا ، تفسير الخازن ، ١ : ٣٠٩ .
(٤) الكليات عند المناطقة خمس جمعها صاحب السلم عبد الرحمن بن محمد الصغير الأخضري ، وقد نظم هذه الأرجوزة سنة ٩٤١ هـ في قوله :

والكليات خمسة دون انتقاص ، جنس وفصل ، عرض نوع وخاص

ولكل منها تعريفه عند المناطقة . والكلي على العموم هو الأمر الصادق على كثيرين متفقين في الحقيقة أو مختلفين مثل انسان أو حيوان ويقابله الجزئي. وهو ما لا يصدق على كثيرين نحو زيد أو مكة .
(٥) جوهرة التوحيد : دين ثم نفس ، والبيت من بحر الرجز .
(٦) د : بحفظه .
(٧) ج ود : النفس .
(٨) في كل الأصول : الاذاية . وما أثبتناه هو الصحيح لأن الأسم من آذى هو أذى وأذية وأذاة (القاموس) .
(٩) اللقاني ، اتحاف المريد بجوهرة التوحيد ، ١٦٣ .
(١٠) ج : منها ما غلب .
(١١) ج : كبلاد .
(١٢) ا : كبلد بس وبلد غرم .
(١٣) ا و ج : غمب . د : وبلد دغمب وبلد يرب .
(١٤) ج : نوبل .

الفصـــل الاول

فى وجوب الهجرة من بلاد الكفار

فأقول وبالله التوفيق : إن الهجرة من بلاد الكفار واجبة : كتابا وسنة وإجماعا .

أما الكتاب فقوله تعالى : (إِنَّ الَّذِينَ تَوَفَّاهُمُ الْمَلَائِكَةُ ظَالِمِي أَنْفُسِهِمْ قَالُوا فِيمَ كُنْتُمْ قَالُوا كُنَّا مُسْتَضْعَفِينَ فِي الْأَرْضِ قَالُوا أَلَمْ تَكُنْ أَرْضُ اللَّهِ وَاسِعَةً فَتُهَاجِرُوا فِيهَا فَأُولَٰئِكَ مَأْوَاهُمْ جَهَنَّمُ) (١) . قال (٢) المفسرون : وفى هذه الآية دليل على وجوب الهجرة من بلاد الكفار (٣) . وقال الجلال عبد الرحمن السيوطى فى التكملة (٤) تفسيره ، فى بيان معنى قوله تعالى (ظَالِمِي أَنْفُسِهِمْ) : بالمقام مع الكفار وترك الهجرة (٥) . انتهى

(٩ أ) / وأما السنة فقوله عليه الصلاة والسلام : إن الله برىء من مسلم ساكن (٦) بين المشركين ، وقوله عليه الصلاة والسلام(٧) : المؤمن والكافر لا تتراءى نارهما . أوردها سيدنا مختار بن أحمد الكنتى فى النصيحة الكافية (٨) . وقوله عليه الصلاة والسلام : من جامع المشرك أو سكن معه فإنه مثله . رواه أبو داود عن سَمُرة

وأما الاجماع فقد قال الونشريسى فى المعيار : والاجماع على وجوب الهجرة (٩) . انتهى

ولا تكون (١٠) مراعاة (١١) حقـوق القرابة والزوجية عذرا لأحد فى (١٢) ترك الهجرة ، فالأموال والمساكن(١٣) من باب أحرى ، قال تعالى : (قُلْ إِنْ كَانَ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ وَإِخْوَانُكُمْ وَأَزْوَاجُكُمْ وَعَشِيرَتُكُمْ وَأَمْوَالٌ اقْتَرَفْتُمُوهَا وَتِجَارَةٌ تَخْشَوْنَ كَسَادَهَا وَمَسَاكِنُ (٩ب) تَرْضَوْنَهَا / أَحَبَّ إِلَيْكُمْ مِنَ اللَّهِ وَرَسُولِهِ وَجِهَادٍ فِي سَبِيلِهِ) فقعدتم لأجله عن الهجرة(١٤)

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(١) سورة النساء ، ٩٧ .
(٢) ١ : وقال .
(٣) تفسير البيضاوى ، ٩٥ .
(٤) ج ود : تكملة .
(٥) تفسير الجلالين ، ١ : ٩٠ .
(٦) فى كل الأصول : ساكنا .
(٧) د : عليه السلام .
(٨) لم نعثر لسيدنا مختار بن احمد الكنتى كتابا بهذا العنوان .
(٩) المعيار ، ١ : ورقة ٩٧ ظهر ونص الونشريسى هو : والإجماع على من أسلم بدار الحرب أن يهجره ويلحق بدار المسلمين .
(١٠) ج : تكن .
(١١) ج : مراعة .
(١٢) د : وترك .
(١٣) د : المساكين .
(١٤) تفسير الجلالين ، ١ : ١٧٦ .

الفصل الثامن والخمسون : فى سيرة النبى صلى الله عليه وسلم [1] مع الخلق لما بعث اليهم .

الفصل التاسع والخمسون : فى خلافة أبى بكر ، رضى الله عنه .

الفصل الستون : فى خلافة أمير المؤمنين عمر بن الخطاب [2] ، رضى الله عنه .

الفصل الحادى والستون : فى خلافة أمير المؤمنين عثمان بن عفان ، رضى الله عنه .

(٥ب) الفصل / الثانى والستون : فى خلافة أمير المؤمنين على بن أبى طالب ، رضى الله عنه .

الفصل الثالث والستون : فى خلافة أمير المؤمنين الحسن بن على [3] ، رضى الله عنه .

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(١) ج : النبى عليه الصلاة والسلام .

(٢) د : ابن الخطاب أمير المؤمنين عمر .

(٣) ابن أبى طالب : زيادة فى د .

الفصـــــل الأربعـــــون : فى حكم ولد الحربى وماله اذا أسلم ببلد الحرب واستمر فيها ، أو[1] خرج الينا وترك ولده وماله هناك .

الفصل الحادى والأربعون : فى حكم أموال المسلمين المقيمين ببلد الحرب اختيارا .

الفصل الثانى والأربعــون : فى حكم فداء أسارى المسلمين والرجوع بالفدية .

الفصل الثالث والأربعون : فى الأمـــان .

(٤ب) الفصل الرابع / والأربعون : فى الصلح مع الحربيين على المهادنة .

الفصل الخامس والأربعون : فى أحكام [2] أهل الذمة .

الفصل السادس والأربعون : فى الفرق بين قتال الكافرين بالأصالة وبين قتال المرتدين .

الفصل السابع والأربعــون : فى الفرق بين قتال البغاة وبين قتال المشركين [3] .

الفصل الثامن والأربعــون : فى الفرق بين قتال المحاربين وبين قتال البغاة [4] .

الفصل التاسع والأربعون : فى حكم أموال المسلمين المقيمين مع المحاربين اختيارا .

الفصـــل الخمـــــــون : فى حكم أموال المفقودين وعدة[5] زوجاتهم ، وحكم غسل الشهداء وتكفينهم والصلاة عليهم .

الفصل الحادى والخمسون : فى العفو والصفح [6] والمؤاخذة والأدب .

الفصل الثانى والخمســـون : فى منع الظلم والنميمة .

(٥أ) الفصل الثالث/والخمســون : فى صفات لا تدوم الدولة معها .

الفصل الرابع والخمســـون : فى الخصال المحمودة للأمراء وغيرهم .

الفصل الخامس والخمسون : فى كتمان السر .

الفصل السادس والخمسون : فى خصلة تسهل لأمير [7] المؤمنين وغيره صحبة الخلائق أجمعين .

الفصل السابع والخمســون : فى ملجأ أمير المؤمنين عند تغير أحواله [8] وما يصلح أموره .

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(١) ج : و .
(٢) ج : حكم .
(٣) المحاربين : زيادة فى د .
(٤) قتال المحاربين وبين : ساقطة من د .
(٥) أ و ب : وعدد .
(٦) ج و د : والصلح .
(٧) د : الأمير .
(٨) ب : تغير .

بمحل يؤمَن غدرهم .

الفصل الثامن والعشرون : في تدبيرات الحرب وحيله (1) في الجهاد .

الفصل التاسع والعشرون : في حكم الافتخار عند الرمي والرجز والتسمية والصياح في الجهاد .

(٣ب) الفصل / الثلاثون : في وجوه القتال .

الفصل الحادي والثلاثون : في حكم قتال الكفار اذا تترسوا بذريتهم أو بالمسلمين .

الفصل الثاني والثلاثون : في حكم الفرار من الكفار في الجهاد .

الفصل الثالث والثلاثون : في أصناف الغنائم .

الفصل الرابع والثلاثون : في كيفية قسمة الغنيمة .

الفصل الخامس والثلاثون : في حكم الغلول وأخذ المرء ما يستحقه من الغنيمة ، اذا كانت لا تقسم قسمة شرعية .

الفصل السادس والثلاثون : في الخُمُس وسائر أنواع بيت المال ، وحكم تعقب ما باعه ولاة الجور وعماله (2) من بيت المال (3) .

الفصل السابع والثلاثون : في حكم ما حازه الكفار من أموال المسلمين .

(٤أ) الفصل الثامن والثلاثون : في حصول الحرية لعبيد الكفار / الحربيين اذا فروا الينا ، وجواز وطء النساء (اللاتي(4))سُبين منهم بعد الاستبراء بحيضة (5) ، وان كان لهن أزواج في دار الحرب .

الفصل التاسع والثلاثون : في حكم من وُجد في أيدي الكفار مستعبدًا وادّعى أنه حر (6) مسلم ، أو أُخذ في الجهاد وادّعى أنه حر (7) مسلم لم يهاجر ، أو جُلب من بلد كثُر (8) فيه بيع الأحرار وادعى أنه حر (9) مسلم .

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(1) هكذا في كل الأصول والأصح (وحيلها) ، لأن الحرب مؤنثة مجازية ويعود الضمير مؤنثا ، على المؤنث بقسميه : حقيقيا كان أو مجازيا . وتجوز اعادته على الامام فيصح التذكير على ذلك .

(2) ج : وعمالهم .

(3) وغيره : زيادة في ج .

(4) في كل الأصول : التي .

(5) واحدة : زيادة في ج .

(6) حر : ليس في ١ .

(7) حر : ليس في ١ .

(8) ج : كثير .

(9) حر : ليس في ج و د .

الفصل الثامن : في أساس الإمارة .

الفصل التاسع : في أركان الولاية .

الفصل العاشر : في أقسام الولاية الشرعية .

الفصل الحادي عشر: في حكم الاستخلاف على البلاد ، (١) وبيان الشروط التي تؤخذ على العمال وحكم / هداياهم . (٢ب)

الفصل الثاني عشر : في ترغيب الناس في الجهاد .

الفصل الثالث عشر : في حكم الجهاد .

الفصل الرابع عشر : في استمرار وجوب الجهاد على الأمة بعد الصحابة رضي الله عنهم الى زمان عيسى عليه السلام (٢) .

الفصل الخامس عشر : في حدّ الجهاد .

الفصل السادس عشر : في شروط وجوب الجهاد .

الفصل السابع عشر : في فرائض الجهاد .

الفصل الثامن عشر : في حكم القتال في الأشهر الحرم (٣) .

الفصل التاسع عشر : فيمن يقاتَلُ في الجهاد .

الفصل العشرون : فيمن يستعان به في الجهاد .

الفصل الحادي والعشرون : في حكم ضرب الطبول (٤) في الجهاد ، إرهابا للكفار .

الفصل الثاني والعشرون : في حكم لبس الحرير في الجهاد .

(٣أ) / الفصل الثالث والعشرون : في حكم تحلية آلات الحرب بالذهب والفضة في الجهاد .

الفصل الرابع والعشرون : في حكم تعليق الأجراس والأوتار في أعناق الدواب في الجهاد .

الفصل الخامس والعشرون : في حكم إعطاء الراية لأمير الجيش في الجهاد .

الفصل السادس والعشرون : في حكم دعوة الكفار الى الاسلام قبل القتال .

الفصل السابع والعشرون : في حكم قبول اسلام (٥) الكفار ، وأخذ الجزية منهم ، اذا كانوا

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(١) ب : العباد .

(٢) الى زمان عيسى عليه السلام : هذه العبارة ساقطة من ١ .

(٣) د و ب : الحرام .

(٤) ب : الطنبول .

(٥) د : الاسلام .

مقدمة المؤلف

(١ أ) بسم الله الرحمن الرحيم وصلى (١) الله على سيدنا محمد وآله وصحبه وسلم تسليما .

قال العبد الفقير المضطر لرحمة ربه عثمان بن محمد بن عثمان بن صالح بن محمد (٢) بن هارون المعروف (٣) بابن فودى ، تغمده الله برحمته ، آمين .

(١ب) الحمد لله رب العالمين ، وأفضل الصلاة وأتم التسليم على سيدنا محمد وعلى آله وصحبه أجمعين . ورضى الله تعالى عن السادة (٤) التابعين ، والعلماء العاملين ، والأئمة الأربعة المجتهدين ، ومقلديهم الى يوم الدين .

أما بعد ، فهذا كتاب « بيان وجوب الهجرة على العباد ، وبيان وجوب نصب الامام ، وإقامة الجهاد » فأقول وبالله التوفيق :

أودعت فى هذا الكتاب ثلاثة (٥) وستين فصلا ، كعدد سنّه عليه الصلاة والسلام . وهو كتاب نافع — إن شاء الله — فى هذا الزمان (٦) لمن عوّل عليه .

الفصـــل الأول : فى وجوب الهجرة من بلاد الكفار .

(٢ أ) الفصـــل الثانــى: فى تأويل قوله عليه الصلاة والسلام : لا هجرة / بعد الفتح .

الفصـــل الثالث : فى ثناء الله تعالى على المهاجرين الذين (٧) خرجوا من ديارهم ، وتركوا أموالهم للكفار ، وعرضوا أنفسهم للبأساء والضرّاء والقتل من أجل الهجرة ، وثنائه على الأنصار الذين آووْهم ونصروهم .

الفصـــل الرابع : فى تحريم موالاة الكافرين (٨) .

الفصـــل الخامس : فى وجوب موالاة المؤمنين .

الفصـــل السادس : فى وجوب نصب الامام .

الفصـــل السابع : فى شروط الامام .

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(١) أ : صل . د : ألا وصل .
(٢) بن محمد : ليس فى ج .
(٣) المعروف ليس فى ١ .
(٤) فى ج و د : السادات .
(٥) فى ج : ثلاثا .
(٦) فى هذا الزمان : ليس فى ١ .
(٧) الذين : ليس فى ج .
(٨) ج : الكفار .

أفريقيا . وأرجو ان يضاعف هذا من الاهتمام بالميراث الديني والفكري لهذه المناطق . واعتقد أن ذلك قد يزيد التعرف على جوانب ظلت مجهولة أو كالمجهولة في العالم الاسلامي . وقد تصحح أمثال تلك الجهود بعض الأخطاء التي لاتزال شائعة في الأذهان عن تاريخ المسلمين في أفريقيا جنوب الصحراء .

فتحي حسن المصري
جامعة محمد بن عبد الله فاس

١٢ ربيع الاول سنة ١٣٩٦
الموافق ١٢ ابريل ١٩٧٦

المسلمين بغرب افريقيا ، ومازالوا الى يومنا هذا يقدسون ذكره ويعتبرونه مجدّد الاسلام على رأس المائة الثالثة عشر. حيث يروى الأثر أن مجددا للدين يبعث على رأس كل مائة سنة . وفي حياة ابن فودى شاعت الاخبار أنه المهدى وأنه ولى من أولياء الله يمشي على الماء ويطير في الهواء لكي يؤدى فريضة الصلاة بمكة . ولكنه كان ينفي عن شخصه ، في صدق وأمانة ، ادعاء المهدية وكل ماكان يضيفه العامة إليه من خوارق الأعمال .

ويستطيع الباحث ان يتتبع في يسر ايضا ، من آثار ابن فودى واتباعه تطور أفكاره من امر بالمعروف ونهي عن المنكر ومحاربة للبدع والاباطيل الى استنكار لجـور الحكام ومعارضة لتماديهم في الباطل ، حتى استخلص من كتب الفقه نظرية متكاملة عن الجهاد في أرض هوسا ، ودستورا اسلاميا أشرف بنفسه على تطبيقه .

وأكثر من هذا وذاك ، كان التطور الذى حوّل اتباعه من مجرد مريدين وطلاب معرفة وايمان ، يتمثلون خطى شيخهم في العبادة ومحاربة الشعوذة والبدع ، إلى « جماعة » كبيرة متماسكة من المجاهدين تنتشر في دولة غوبر وما ولاها من أرض هوسا حتى استطاعت أن تؤسس امبراطورية اسلامية فتية على انقاض سلطة غوبر .

ولقد اعتمدت في تحقيق كتاب (بيان وجوب الهجرة .. .. ..) على أربع مخطوطات : أولاها ورمزت لها بالحرف (أ) ، حصل عليها صديقي الاستاذ أبراهيم مكشى من اقليم غواندو في شمال نيجريا ، وهى نسخة واضحة مقروءة ومضبوطة بالشكل ضبطا صحيحا . والثانية (ب) ، صورة فتغرافية من أصل محفوظ في خزانة أمير غواندو ، تحت باب — فقه — رقم ٦١ . والثالثة (ج) ، صورة فتغرافية أيضا من أصل محفوظ في خزانة السلطة المحلية بمدينة « كانو » . أما الرابعة (د) فهي مصورة عن أصل محفوظ في خزانة المجلس البلدى بمدينة سكوتو ، وكل هذه النسخ محفوظة الآن بمكتبة جامعة أبادان بنيجريا :

وتعد النسخة (أ) العمدة في التحقيق لأن المخطوطات الثلاث الأخرى ، يبدو أنها متأخرة في نسخها ، كما أنها أقل دقة وضبطا . والنسخة الأخيرة (د) تأتي دون الاخريين في صحتها ويبدو أن تاريخ نسخها قريب لا يتجاوز منتصف هذا القرن . أما (ب) فإنها تفضل في جملتها النسخة التى تليها (ج). ومما ساعد على تيسير التعرف على نص كتاب (بيان وجوب الهجرة ....) ، تلك الفقرات التى أوردها المؤلف عن العلماء السابقين ، فإن مراجعتها في مصادرها المطبوعة كانت خير معين على صحة التحقيق . ولما كان الشيخ ابن فودى يورد بعض أقواله واستشهاداته في سائر مصنفاته ، فقد دعاني ذلك الى الموازنة بين نـص هذا الكتاب وبـين الآثـار الاخرى المنسوبة اليه .

وإنى إذ أقوم بتحقيق كتاب (بيان وجوب الهجرة .. .. ..) ، ونشره ، إنما أضيف لبنة متواضعة الى الجهود المبذولة في سـبيل التعرف على التراث العربي الاسـلامي ونشـره وبخاصة في ربوع غرب

ومع ذلك ، كان السلاطين ونوابهم يتقربون إليه ويتبركون به حتى اشتهر أمره وذاع صيته ، وحسده بعض العلماء على مايتمتع به من علو الشأن وكثرة الأتباع ، فأرسلوا من يشوّش عليه مجالس علمه ،وأشاعوا عنه أن الرجال والنساء يختلطون للاستماع الى دروسه ، وسعوا لإفساد مابينه وبين السلاطين . ولكن شيئا من ذلك لم يعترض طريق ابن فودى أن يصبح أشهر نقيه صوفى فى أرض هوسا ، تدين له بالولاء جماعات كبيرة من المسلمين عرفوا باسم « الجماعة » معظمهم من قبيلة الفلانيين وأتباع الطريقة القادرية بصفة خاصة ، بل إن غير المسلمين كانوا يرون فيه قوة روحية فيتقربون اليه ، وبدأ عدد كبير منهم يدخل الإسلام الى أن اصبحت الجماعة قوة مهابة داخل سلطنة غوبر ، تأتمر بأمر الشيخ . ولما كانوا يتميزون بلبس العمامة للرجل والخمار للمرأة ، فلقد حاول السلطان أن يمنعهم من استعمال تلك الشارة كما حاول أن يمنع الوثنيين من الدخول فى الإسلام ، حتى تولى السلطان ينفا سلطنة غوبر عام ١٨٠٢ وكان الفلانيون يرونه ، منذ ولايته للعهد ، أنه اشد عنادا من أسلافه وأكثر كراهية لجماعة الشيخ . وما إن خلى له الجو ، حتى بدأ يبدى العداوة السافرة نحو الجماعة مع أنه كان يظهر الاحترام لابن فودى وحده .

وحدث ان احتد النزاع بين عالم من أتباع ابن فودى ، يدعى عبد السلام وبين ينفا ، فأغارت قواته على قرية هذا العالم وأسرت الكثيرين من اتباعه ، وعند مرورهم على « دقل » لم يتمالك الجماعة فيها من الخروج لمساعدة اخوانهم ، فأشتبكوا مع جند السلطان وحرّروا أنصار عبد السلام من أيديهم فى يناير سنة ١٨٠٤ ، فرأى ينفا أن هذا إعتداء صريح لايمكن السكوت عنه كما انه وجد الفرصة سانحة للتخلص من الخطر الذى يتوقعه من الجماعة على دولته ولذلك طلب من ابن فودى أن ينعزل بأهله عن « دقل » لتغير قوات السلطان على القرية وتؤدب أهلها ، فما كان من ابن فودى الا أن يرفض التخلى عن جماعته ، وابدى استعداده أن يهاجر بهم عن ارض ينفا الى مكان آخر . ولم يثْنه عن عزمه هذا تنازل ينفا عن رغبته ، وطلبه ان يبقى ابن فودى وجماعته آمنين فى دقل . ذلك لأن الجماعة ماكانوا ليثقوا فى وعود ينفا ولم يكن يأمن ينفا من جانبه ، حربهم له اذا ابتعدوا عن سلطانه والتحم بهم اتباع ابن فودى العديدون من اقاليم غوبر وخارجها ... وكانت هجرة ابن فودى وجماعته ،التى ابتدأت فى فبراير من عام١٨٠٤ ،والتى تطورت الى اشتباكات محلية مع انصار ينفا حتى أعلن الجهاد فى سبيل الله ، ونودى بابن فودى أميراً للمؤمنين وأستمر الجهاد حربا شعواء حتى سقطت عاصمة غوبر فى أيدى المجاهدين ، وقتل سلطانها ينفا عام ١٨٠٨ وبقى ابن فودى فى عاصمته « سكوتو » يعمل ، بجانب الادارة العامة للدولة ، فى التدريس والعبادة والتأليف حتى وافته منيته عام ١٨١٧ .

ويستطيع الباحث ان يتتبع فى يسر ، تطور شخصية ابن فودى من شاب سلفى قوى العقيدة صوفى النزعة ، معتدل فى تصوفه ، الى مجاهد فى سبيل الله ، فأمير للمؤمنين على رأس امبراطورية إسلامية شامخة ، إذ ان ما دوّنه ابن فودى من كتب فى التوحيد والفقه والتصوف ، وهى تربو على التسعين ومادونه اتباعه وخاصة ابنه محمد بل[٤] ، خليفته وأمير المؤمنين من بعده ، وأخوه عبد الله بن فودى ، كل تلك الآثار تبين مسار هذه الشخصية وتعطى فكرة واضحة عن المكانة التى احتلها ابن فودى فى نفوس

الفلاني نسبا ، الهوسى موطنا ، المالكى مذهبا والأشعرى عقيدة ، كما كان يقول عن نفسه فى معظم كتاباته، فهو ينتمى الى قبيلة الفلانيين الذين هاجروا من شمال افريقيا الى اقاليم « فوتا تورو » و « فوتاجالون » فى موقع السنغال وغينيا الحاليتين ، فى زمن ضارب فى القدم ولم يصل العلماء بعد الى تحديد تفاصيل هـذه الهجرة . وهنا استقرت القبائل الفلانية زمنا طويلا حتى رحل جزء منها شرقا فى أواسط القرن الخامس عشر تقريبا وعاشوا فى مواطن القبائل الهوسية ، وكان أسلاف شيخنا عثمان بين هؤلاء ،فهو إذن فلانى نسبا ، هوسى موطنا وكان الى جانب ذلك أشعرى العقيدة ، مالكى المذهب ، إذ هو المذهب السائد فى كل غرب افريقيا حتى يومنا هذا. ولقد اشتهر بكنية «ابن فودى»[1] وكان أبوه محمد فودى عالما شهيرا وسيدا فى قومه « بنى عال » أكثر عشائر الفلانيين عددا ، وأقواهم نفوذا واشهرهم إسلاما فى ذلك القطر . وولد عثمان بن فودى يوم الأحد آخر أيام صفر من عام ١١٦٨هـ الموافق ١٥ ديسمبر ١٧٥٤م ، وتلقى مبادىء العلوم العربية والاسلامية على أكابر العلماء فى أرض هوسا حتى نبغ فيها وبدأ يؤلف مدائح نبوية باللغه الفلانية أول الأمر ثم باللغة العربية بعد ذلك ولمّا يتجاوز العشرين من عمره . واشتهر فى الوقت نفسه بصلاحه وتقدمه فى علوم الفقه والتصوف حتى أصبح له طلبة ومريدون يلازمونه فى موطنه « دقل Degel » ببلد « غوبر Gobir » ، ويصطحبونه فى رحلات الوعظ والارشاد الى المناطق المجاورة، وكان له مع تدريسه النظامى للطلبة ، دروس دينية عامة ، يعـظ فيها المسلمين ان يتمسكوا بتعاليم الدين وأن يتجنبوا « البدع الشيطانية التى أحدثها الناس فى أبواب الملة المحمدية » وجعل هذا المبدأ عنوانا لكتاب ألفه فيما بعد ، بيّن فيه ضروب البدع التى كانت سائدة آنذاك .. ومن جهه ثالثة ، كان يعقد مجالس خاصة للعلماء والمتقدمين من الطلبة للمذاكرة والعلم ، ويلقى فيها دروس التصوف إذ كان ينتسب الى الطريقة القادرية التى دخلها عن طريق الشيخ مختار بن احمد الكنتى وأخذ يرتقى فى سلمها بخطى حثيثة حتى أصبح شيخا مرموقا من شيوخها .

وكان ابن فودى يحذر سلاطين هوسا كل الحذر ، ويخشى من بطشهم فلا يتعرض لهم ولا لنوابهم بسوء فى مجالسه العامة أو الخاصة .. كما كان يُحذّر الشباب المتحمس من طلبته وأعوانه ، ألا يثيروا غضب السلاطين عليهم بفعل أو قول . ولكن كان من رأيه أن هؤلاء السلاطين لم يكونوا من الاسلام فى شىء .. فهم كانوا يظلمون الرعية ويبتزون أموالهم من وجهة غير شرعية ، كما كانوا جائرين فى أحكامهم لا يتبعون ما أمر الله، ويخلط من يدعى الاسلام منهم، عمل الاسلام بعمل الشرك فى عقائده وعبادته، وفى الباب الأول من الكتاب الذى نحن بصدده ، يوزد ابن فودى حكمه فى شأن سلاطين هوسا بأنهم كفار ، يجـب على المسلمين أن يهاجروا بدينهم من أرضهم .. « لأن حكم البلد حكم سلطانه بلا خلاف ، إن كان مسلمـا كان البلد بلد إسلام ، وإن كان كافرا كان البلد بلد كفر ، يجب الفرار منه إلى غيره ..»

على أن ابن فودى لم يجهر بأفكاره هذه أول الامر ، فيما يبـدو من المخطوطات التى وصلتنا ، ولا من مسار علاقاته مع السلاطين . فهو — كما سبق القول — كان يتجنبهم ولم يسع للتقرب اليهم مثل باقى العلماء الذين كانوا يتنافسون فى إظهار المحبة لهم ، ولم يرض أن يقبل هداياهم أو يقوم بتعليم أبنائهم .

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(١) (دان فوديو) باللغة الهوسية : (دان) يعنى ابن و(فوديو) معناها العالم . وذلك لان أباه محمداً اشتهر بعلمه فلقب (بفوديو) .

بسم الله الرحمن الرحيم
وبه نستعين

تقديم

لقد أرادت لى الحياة أن أعايش التراث الدينى والفكرى لمنطقة نيجيريا الشمالية ، ورأيت أن الواجب يقتضينى أن أبحث عن علم بارز من أعلام هذا التراث ، يمثله أصدق تمثيل ، فكان من حسن حظى أننى اهتديت الى أمير المؤمنين الشيخ عثمان بن فودى ، الذى جمع بين الفقه والتصوف والذى وجّه الأحداث فى المنطقة التى نشر فيها دعوته وفقهه . ولم أشأ أن أقتصر على تتبع سيرته وتوضيح الاطار الدينى والفكرى لعصره ، بل حملتُ مسئولية نشر وثيقة له تدل بذاتها على الخصائص والمقومات التى تحكيها سيرته وشخصيته وعصره .

ولقد تناولت بالبحث فى الجانب الأفرنجى من هذا الكتاب ، حياة المؤلف وثقافته ومدى مساهمته فى تطور الفكر الاسلامى والظروف التى نصب نفسه فيها أميرا للمؤمنين ، فأقام الجهاد فى سبيل الله حتى تكللت مساعيه بتأسيس دولته الاسلامية فى « سكوتو » عاصمة الولاية الشمالية الغربية من نيجيريا الحالية . واكتمل هذا البحث عام ١٩٦٨ ولازال الدارسون فى جامعات نيجيريا بخاصة ، وجامعات غرب أفريقيا مع غيرهم من علماء أوربا وأمريكا يتابعون دراسة مظاهر الاصلاح الدينى الذى قاده الشيخ عثمان ابن فودى ، وما واكبه من دراسات اسلامية وعربية . ومما يلاحظه المتتبع لهذه الدراسات ، هو إهمال العالم العربى والإسلامى – خارج غرب افريقيا – لهذا الجانب من تراثه وماضيه ، فلم يأبه – مثلا – بإنشاء معاهد فى جامعاته تتخصص فى الدراسات الاسلامية بافريقيا جنوب الصحراء ، ولم يوفد طلبته لاجراء أبحاث عنها فى جامعات غرب أفريقيا ، وفيها من وسائل البحث مايغرى بالجهد والاستقصاء ، ومن المخطوطات العربية آلاف مؤلفة . ولقد كان الشيخ عثمان بن فودى يستعين بعدد كبير من الابل تحمل وراءه مكتبته الضخمة أثناء حملات الجهاد ضد سلاطين هوسا . وكان اهتمام المسلمين فى غرب افريقيا بالكتاب ، منذ دخول الاسلام فيها ، بالغا للغاية ولقيت المخطوطات العربية رواجا تجاريا هائلا بين شمال افريقيا وغربيها . وجاءت النهضة الاسلامية التى فجرّها الشيخ عثمان بن فودى تعمّق من عناية مسلمى غرب افريقيا بالكتاب وحرصهم على اقتنائه ، فظل اهتمامهم به واضحا حتى بعد أن داهمهم الاستعمار الغربى وكافح فى التبشير المسيحى ومحو اللغة العربية من أذهانهم . ومازالت هناك ذخيرة ضخمة من المخطوطات التى تكشف عن ماضى العروبة والاسلام فى حياة المواطنين بغرب افريقيا ، وتفسّر حاضرهم .

ولقد اخترت الوثيقة التى ترتكز الدراسة عليها وهى « كتاب بيان وجوب الهجرة على العباد ، وبيان وجوب نصب الامام واقامة الجهاد » (١) لأمير المؤمنين الشيخ عثمان محمد فودى بن عثمان ،

(١) فرغ المؤلف من تاليفه عام ١٨٠٦ .

الناشرون :

دار جامعة الخرطوم للنشر

جامعة الخرطــوم

ودار النشر ــ جامعــة اكسفورد

١٣٩٧هـ ــ ١٩٧٧م

الطـــابعـــون : دار الطباعة

دار جامعة الخرطـــوم للنشر

كتاب بيان وجوب الهجرة على العباد وبيان وجوب نصب الامام واقامة الجهاد

تأليف
الشيخ عثمان بن فودى

حققه وترجمه الى الانكليزية وقدّم له
فتحي حسن المصرى
استاذ مشارك كلية الآداب
جامعة الخرطوم

الناشرون
دار جامعة الخرطوم للنشر — دار جامعة اكسفورد النشر
١٩٧٧

اتحـاد الاكـادىميـات الـدولى

مصادر التـاريخ الأفريقى

السلسلة العربية ١

مجموعة تنشر تحت اشراف ج . و . هنويك بمساعدة
ف . مونتيل و ج . ف . پ هوبكينس ويوسف فضل حسن ومحمود زبير

نشر بتوصية من المجلس الدولى للفلسفة والدراسات الانسانية و بمساعدة اليونسكو المالية

بيان وجوب الهجرة على العباد



Fathi Hassan El Masri was born in Abri in the Northern Province of the Sudan, in 1926. He was educated at Sudanese schools and graduated from Gordon Memorial College, Khartoum. He obtained a B.A. (Honours) from the School of Oriental and African Studies, University of London, and a Ph. D. from the University of Ibadan. Dr. El Masri lectured at the University of Ibadan from 1961 to 1971 and then at the Islamic University of Omdurman. From 1974 to 1976 he lectured at the University of Muhammad b. Abdullah in Fez and is now Associate Professor at the University of Khartoum.